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Canada. Parliament. Senate.  
Standing Committee on Transport  
and communications.

Proceedings 1966-67 No. 1-13

1967-68 No. 1-7

1968-69 No. 1-16













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First Session—Twenty-seventh Parliament

1966

# THE SENATE OF CANADA

## PROCEEDINGS

### OF THE

### STANDING COMMITTEE ON

# TRANSPORT AND COMMUNICATIONS

The Honourable A. K. HUGESSEN, *Chairman*

No. 1

*Complete Proceedings on Bill S-2,*

intituled: "An Act to incorporate the Ottawa  
Terminal Railway Company"

THURSDAY, FEBRUARY 24, 1966—69

#### WITNESSES:

*Dept. of Transport:* Mr. Jacques Fortier, Q.C., counsel; *Brotherhood of Locomotive Engineers:* Mr. J. F. Walter, Assistant Grand Chief Engineer; *Canadian National Railway:* Mr. J. W. G. MacDougall, Q.C., general solicitor; *National Capital Commission:* Lieut. General S. F. Clark, Chairman.

#### REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966



THE STANDING COMMITTEE

on

TRANSPORT AND COMMUNICATIONS

The Honourable

ADRIAN K. HUGESSEN,

*Chairman*

The Honourable Senators

Aird,	McDonald,
Aseltine,	McGrand,
Baird,	McKeen,
Beaubien ( <i>Provencher</i> ),	McLean,
Burchill,	Methot,
Connolly ( <i>Halifax North</i> ),	Molson,
Croll,	Paterson,
Dessureault,	Pearson,
Dupuis,	Phillips,
Farris,	Power,
Fournier ( <i>Madawaska-Restigouche</i> ),	Quart,
Gelinas,	Rattenbury,
Gershaw,	Reid,
Gouin,	Roebuck,
Haig,	Smith ( <i>Queens-Shelburne</i> ),
Hayden,	Thorvaldson,
Hollett,	Veniot,
Hugessen,	Vien,
Isnor,	Welch,
Jodoin,	Willis,
Kinley,	Woodrow—(46).
Lang,	<i>Ex officio members</i>
Lefrançois,	Brooks,
Macdonald ( <i>Brantford</i> ),	Connolly ( <i>Ottawa West</i> ).
McCutcheon,	

(Quorum 9)





## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 2nd, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Hugessen moved, seconded by the Honourable Senator Bouffard, that the Bill S-2, intituled: "An Act to incorporate the Ottawa Terminal Railway Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hugessen moved, seconded by the Honourable Senator Bouffard, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, February 24, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aird, Aseltine, Connolly (*Halifax North*), Haig, Hollett, Isnor, Kinley, McCutcheon, McGrand, Pearson, Rattenbury, Roebuck, Smith (*Queens-Shelburne*) and Veniot.—15.

*In attendance:* Mr. E. Russel Hopkins, Senate Law Clerk and Parliamentary Counsel.

Bill S-2, An Act to incorporate the Ottawa Terminal Railway Company, was read and considered clause by clause.

The following were heard: *Dept. of Transport:* Mr. Jacques Fortier, Q.C., counsel. *Brotherhood of Locomotive Engineers:* Mr. J. F. Walter, Assistant Grand Chief Engineer. *Canadian National Railway:* Mr. J. W. G. MacDougall, Q.C., general solicitor. *National Capital Commission:* Lieut. General S. F. Clark, Chairman.

On motion of the Honourable Senator Smith (*Queens-Shelburne*), it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committees proceedings on the said Bill.

It was resolved to report the Bill without any amendment.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest:

John A. Hinds,  
*Ass't Chief Clerk of Committees.*

## REPORT OF THE COMMITTEE

THURSDAY, February 24, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-2, "An Act to incorporate the Ottawa Terminal Railway Company", has in obedience to the order of reference of February 2nd, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Thursday, February 24, 1966.

The Standing Committee on Transport and Communications to which was referred Bill S-2, to incorporate the Ottawa Terminal Railway Company, met this day at 11 a.m.

Senator A. K. Hugessen in the Chair.

The CHAIRMAN: Honourable senators, we are to consider today a bill which is not new to us, as this is the third time we have had to consider it. It is Bill S-2, an act to incorporate Ottawa Terminal Railway Company. It is an important public bill, so I think we should have the usual motion to permit the reporting and printing of the proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Gentlemen, we have here as witnesses on behalf of the National Capital Commission, our friend Lieutenant General S. F. Clark, whom we have heard before on this matter; Mrs. E. M. Thomas, Counsel for the N.C.C.; Mr. D. L. McDonald, Director of Planning; Mr. J. M. Landry, Director of Information; Mr. W. M. Davidson, Railway Consultant; and Mr. H. A. Davis, Assistant General Manager of Operations.

From the Department of Transport we have Mr. Jacques Fortier, Q.C., Counsel. Representing the two railway companies, the Canadian National Railway and the Canadian Pacific Railway, we have Mr. J. W. G. MacDougall, Q.C., General Solicitor, Canadian National Railways, who is not a stranger to this committee.

We also have the Brotherhood of Locomotive Engineers representative, Mr. J. F. Walter, Assistant Grand Chief Engineer.

I may say that I instructed the Committees Branch to notify regarding today's hearing all those people who had appeared either at the last meeting or the meeting before that. So I think everybody who is interested in this bill has had notification of this hearing.

I do not know how the committee wishes to proceed with this bill. We had a very long and full discussion of the bill last June. Perhaps the best thing to do will be to get Mr. Fortier to tell us in what respect, if any, the present bill now before us differs from the bill we had on the last occasion, when we reported it favourably.

Some Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Fortier, will you tell us the respects in which this bill now differs from that which was before us last year?



**Mr. Jacques Fortier, Q.C., Counsel, Department of Transport:** Honourable senators, the bill is in exactly the same form and terms as the bill which was approved by this committee last year, except for one amendment. In clause 10, paragraph (e) we have deleted from last year's Bill S-3 the power of the Ottawa Terminal Railway Company regarding hotels. The deletion has been made at the request of both railways, the C.N.R. and C.P.R., and the amendment was concurred in by the Minister of Transport. Otherwise, the bill is in the same form and terms.

Senator ROEBUCK: Mr. Chairman, may I say that honourable senators will recollect that when this bill came before the Senate some little time ago, objection was taken to the fact that no provision was made in the bill for the protection of the workers on the railroads who would be transferred from their former employment with the C.N.R. and C.P.R. to the new company which was being formed.

No provisions were made for their continued wage structure, the bargaining rights which they possessed as a result of many years of such experience. Also, above all, nothing had been said with regard to seniority.

We heard representations from the railroads regarding the running trades and non-ops, and we were taking, I think, some credit to ourselves for having brought the parties together. A letter was exchanged, of which I have a copy, between Mr. W. G. McGregor, of the National Legislative Committee, Brotherhood of Railroad Trainmen, and Mr. F. H. Hall, representing the Non-Operating Committee, which seemed to settle the matter entirely and very satisfactorily. The railroads and the men had come to an agreement. I cannot give you the details of it and that is unnecessary.

Today we have representatives from the locomotive engineers. I would like to introduce Mr. J. F. Walter, the legislative representative of the Brotherhood of Locomotive Engineers.

In addition, we have Mr. F. J. Lapointe, the local chairman of the Brotherhood of Locomotive Engineers, C.N.R.

We have here with us also Mr. J. C. Gillespie, noble chairman of the Board of Locomotive Engineers, C.P.R. They are not joining entirely in the settlement included in this letter.

I fancy we could proceed most expeditiously by asking Mr. Walter to state the exception which he makes in the general arrangement made between the Brotherhood of Railroad Trainmen, the non-ops, and the railroad. If that is satisfactory, may I call on Mr. Walter?

The CHAIRMAN: Honourable senators, does that meet with your approval?

Hon. SENATORS: Agreed.

**Mr. J. F. Walter, Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers:** Mr. Chairman and honourable senators, I have not prepared a formal brief, but I have some notes which will explain our position.

We are honoured and appreciate the opportunity to appear before the Senate Committee on Transport and Communications to speak on behalf of locomotive engineers who will be affected by the changes in railway operations proposed in Bill S-2 which is now before your committee. Honourable senators will recall that representatives of various railway unions appeared before your committee last year and asked for consideration of an amendment to Bill S-3 which was the Ottawa Terminal Railway Bill at that time. The amendment asked for was designed to provide what is generally termed "successor rights". The position was set out very well by Mr. W. G. McGregor, Vice-Chairman of the National Legislative Committee and you can find the record of this at page 52 of Volume 4 of the proceedings of this committee on Thursday, June 3, 1965.

Honourable senators will also recall that agreement in principle was reached between representatives of the railways and the Brotherhoods wherein assurance was given that

"... employees would continue to receive benefits, or equivalent benefits, that they now enjoy under their applicable collective agreements or otherwise established benefits and practices in effect, including pension rights and pass privileges, until normal termination or until such agreements or benefits are replaced through normal collective bargaining processes under the I.R.D.I. Act between the Ottawa Terminal Railway Company and the respective unions representing the employees concerned."

At the time our brotherhood joined with the representatives of other unions in the representations which were made to your committee. We were very appreciative of the efforts on our behalf and the results obtained. I understand that the other trade unions involved are satisfied that any problems arising out of the creation of the Ottawa Terminal Railway will be adequately dealt with by the commitments given by the railways as to the protection which will be given employees in the transition from the parent companies to the Ottawa Terminal Railway Company.

The reason we come before your committee today is to ask that you give consideration to an amendment to the bill which will protect employment rights that locomotive engineers presently have with the parent companies that they cannot possibly obtain working for a new company, such as the Ottawa Terminal Railway Company. I refer to rights to main line and yard service. In this respect locomotive engineers are in a considerably different position than any of the other groups of railway employees. Our men, as you may know, hold seniority on the main line, as well as in yard service. Main line work is generally considered preference employment; however, yard service is important to our men because of regular hours and job opportunity for employment of engineers who may not qualify for main line work due to medical reasons. We are, therefore, reluctant to give up rights to either yard or main line service. These rights have been hard won by the men we represent and to ask employees to choose between yard or main line service on a permanent basis is a serious proposition for men who have worked years to establish seniority entitlement to these jobs.

Our brotherhood does not agree that it is necessary or desirable to transfer employees from the parent companies to the Ottawa Terminal Railway Company. We feel this problem should be met by the parent companies supplying locomotive engineers to the Ottawa Terminal Railway Company as required. This will have the effect of protecting all employee rights in the parent company while giving the Terminal Railway Company a ready supply of trained personnel without upsetting seniority or service benefits.

We would suggest, therefore, that consideration be given to the amendment of Bill S-2 which would require the Ottawa Terminal Railway Company to utilize the service of locomotive engineers presently employed by the Canadian National Railways and the Canadian Pacific Railway Company in place of hiring personnel for this purpose.

I would like to add to that by saying that since we appeared here the last time we have had the benefit of the Freedman Commission Report, in which Mr. Justice Freedman has recognized the obligation of employers to employees when dealing with any situation such as in that particular case, run-throughs. We have a comparable situation here, inasmuch as the railways are joining in an arrangement whereby the services of a locomotive engineer on the parent company will now only be required in the Ottawa terminal—that is, if the

railways go ahead with their plan to hire new personnel from the parent companies for their Ottawa terminal.

We feel that in view of what Mr. Justice Freedman has said, and the recognition he has given to the rights of employees to seniority and conditions of employment prior to the proposed run-throughs, this same principle should apply in dealing with the locomotive engineers, or any employee for that matter, who may be affected by the changes proposed in Bill S-2. We would ask your committee to give consideration to this problem.

The CHAIRMAN: Mr. Walter, it would help the committee if you could give us the text of any proposed amendment you would like to make. Have you considered that?

Mr. WALTER: I have not considered a text, but I would be very pleased to do that.

Senator ROEBUCK: May I ask a question? Would it not be satisfactory if, instead of amending the bill, you could arrive at an agreement or an understanding such as that which the other unions have achieved, and which appears in the letter with which you are familiar? It is a mere amendment to the situation which developed between the companies and the other unions. I am referring to Mr. McGregor's letter in which he says:

It is pleasant to receive such considerate action—

He is speaking about the action of the committee.

—and I am very pleased to advise that the Brotherhood of Railroad Trainmen will not make representations with respect to the subject matter of this Bill as an exchange of correspondence between the railway companies and representatives of the Union have agreed upon basic principles to resolve the matters raised before the Committee on June 3, 1965.

So, that matter was disposed of with respect to all the other unions with the exception of yours. What about the firemen?

Mr. WALTER: I cannot speak for the firemen, Senator Roebuck. I imagine they would be in somewhat the same position as we are.

Senator ROEBUCK: Then, your difficulty is that the men of your union—and this differentiates them from the others—have seniority in both yard and road service.

Mr. WALTER: That is right.

Senator ROEBUCK: And if they transfer to the new company they will have seniority in yard service only?

Mr. WALTER: That is right.

Senator ROEBUCK: And only so far as the staff of the new company is concerned?

Mr. WALTER: Yes.

Senator ROEBUCK: What you are asking is that the company, as it needs the services of your men, will call upon the pool which you have in both these companies?

Mr. WALTER: Exactly.

Senator ROEBUCK: You suggest an amendment to the act which would require the new company to call upon the railroads when they need an engineer. You would also require, would you not, some compulsion on the part of the railways to supply the engineers?

Mr. WALTER: Yes, that is correct.

Senator ROEBUCK: Not only would the company be required to go to the railroads for its engineers, but also the railroads would be required to supply the engineers?



Mr. WALTER: That is right.

Senator ROEBUCK: Would not that be better achieved by an understanding between yourselves and the railroads than by any possible complicated amendment to the bill?

Mr. WALTER: Well, certainly we would be agreeable to sitting down with the railways and discussing this, to see if we could arrive at an understanding. The understanding that was previously put forward by the railways contemplated that all employees would transfer to the new company. If we could reach an understanding with the railways on this matter then we would be more than pleased to handle it in that manner.

Senator ROEBUCK: Mr. Chairman, are the representatives of the railroads here? If so, perhaps they can speak to this point.

The CHAIRMAN: Mr. MacDougall represents both railway companies. Perhaps he can say a word to us on this.

**Mr. J. W. G. MacDougall, Q.C., General Solicitor, Canadian National Railways:** Mr. Chairman and honourable senators, I had no notice of the representations that were being made to you this morning by Mr. Walter. Therefore, I must speak from my general knowledge of the situation. As I understand it, the plans of the two railway companies with respect to the handling of trains by locomotive engineers does not contemplate at any time having engineers transferring from the Canadian National and the Canadian Pacific to the new Ottawa Terminal Railway Company.

It is my understanding that the engine-men necessary to handle trains, in both road and yard service in the operations to be conducted here, will be drawn by the Ottawa Terminal Railway Company from the Canadian National and the Canadian Pacific. All those employees will retain their seniority on their own railroad, and will retain their employment on their own railroad, and the Ottawa Terminal Railway Company will contract for the services of those who will be required to carry on the operations here. So, I think I can safely say that the problem envisaged by Mr. Walter will not arise—at least, not in the contemplation of the railroads.

However, if he wishes to put his point down in a letter to the railroads I can assure him that they will be willing to study the matter, and to give all the assurance that is required. Certainly, the railroads would have no objection to that.

Senator PEARSON: Will the crews of the Ottawa Terminal Railway Company and the crews of the railway companies be interchangeable? Will the railways run right into the station, or will their crews be discharged at a point outside the area?

Mr. MACDOUGALL: No, the passenger trains will go right through.

Senator PEARSON: There will be no stop somewhere along the way to pick up a new crew?

Mr. MACDOUGALL: No.

The CHAIRMAN: As I see it, the Ottawa Terminal Railway Company will employ railroad engineers only in shunting operations?

Mr. MACDOUGALL: Yes, on switching operations, and they will come from the railways. They will not be employees of the Ottawa Terminal Railway Company.

Senator ROEBUCK: Is not that satisfactory, Mr. Walter?

Mr. WALTER: That is precisely what we want to hear, but we have been unable to get this commitment up to this point at the local level. We will certainly get a letter out to you to verify this. That solves our problem, I think,

if that is the intention of the Canadian National Railways—and, of course, you are speaking for the Canadian Pacific as well.

Mr. MacDOUGALL: As I understand it, that is the position.

Senator PEARSON: Are you speaking for the Canadian Pacific, too?

Mr. WALTER: Yes, I am speaking for the Brotherhood of Locomotive Engineers.

Senator ISNOR: Mr. Walter, have you written such a letter?

Mr. WALTER: No, we have not written a letter yet, simply because we have been dealing with this at the local level. Our problem here is that we have difficulty in dealing with the Ottawa Terminal Railway Company until it is set up, so that all we can do is to deal with the Canadian National Railways and the Canadian Pacific Railway Company through our local representatives. When they approached the Canadian Pacific or the Canadian National they were invariably told that things have not yet been decided, and that they could not be given specific answers to these questions until the terminal is set up, the officials hired, and a policy as to how this matter will be handled is set down. We have had no concrete answer up until today as to how the crews will be assigned, or how they will be hired by the Ottawa Terminal Railway Company.

The CHAIRMAN: Mr. Walter, you have heard the policy stated by the representative of the railway companies. It is public, and it will be printed in our record. I think you could very easily close the matter by correspondence.

Mr. WALTER: Yes, I think we can, and we are quite happy with that solution. Thank you very much.

The CHAIRMAN: Does the committee wish to hear General Clark? You will remember that he gave us a very full presentation last June. Would you like to hear him on what has transpired since then?

Perhaps, General Clark, you would give us a word on that. Of course any members of the committee who were not present when General Clark gave evidence here previously may ask any questions they see fit.

**Lieutenant General S. F. Clark, Chairman, National Capital Commission:** I can make this very brief by just outlining the program since we appeared before you last June. The contracts for the new railway station have been let since that time and we hope it will be finished on or about July 17 of this year. Our hope is that it will be open during July or August. The contract has been awarded for the depression of the Prescott subdivision to keep the roads and railway separate, and we expect to be able to put the station into operation on or about July 1st this year. That would permit us to proceed with the other programs contingent upon the finishing of that part of the railway plan.

I think that is as briefly as I can put it.

Senator HOLLETT: General Clark, you are familiar with the question raised last year about the removal of the tracks on Riverside Drive. Is there any further action in that respect?

General CLARK: Mr. Chairman, this point was raised by the City of Ottawa and by a group of people known as the Citizens for Ottawa Planning. In order to try to resolve it, the City of Ottawa suggested at a meeting with the commission and the railways that a private consultant be engaged to see if it was feasible to remove the Beachburg subdivision from Ross Junction to Hurdman—that is the location of the new station. The commission received authority to pay 50 per cent of the cost of the study if the city wished, and a firm of consultants by the name of C. C. Parker and Associates are now studying the matter to determine whether there is an engineering solution which would be acceptable to the railways from the point of view of railway

operations and to determine the costs and what would be involved in the elimination of that section of the Beachburg subdivision. We shall not receive that report for some months as it is a very complex study.

Senator HOLLETT: That is how the matter stands at the moment.

The CHAIRMAN: Any further questions of General Clark? Thank you, General. Does the committee wish any further evidence or are you prepared to proceed with the bill on the evidence we have received so far?

Some Hon. SENATORS: Proceed.

The CHAIRMAN: Shall I go through the bill section by section?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 1: Short title. Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2: Incorporation. Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3: Provisional directors. Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4: Capital stock. Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5: Head office. Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6: General meetings, and Annual meeting. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 7: Numbers of directors. Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8: Executive committee of directors, Number of Members, and Composition. Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9: Undertaking. Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 10: Powers of Company—this is the section with the general powers and the change in subsection (e) omitting the word “hotels”. Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 11: National Railways may convey to the Company lands, buildings, etc. in the City of Ottawa. Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 12: Canadian Pacific Railway Company may convey to the Company lands, buildings, etc. in the City of Ottawa. Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13: Agreement for use of Company's undertaking. Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 14: Issue of securities. Shall section 14 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 15: C.N.R. and C.P.R. may acquire stock of the Company and guarantee principal and interest of securities. Shall section 15 carry?



Hon. SENATORS: Carried.

The CHAIRMAN: Section 16: By-laws and regulations and management of terminal. Shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17: Time for construction. Shall section 17 carry—General Clark, you have the first day of January, 1967 to complete everything—will that be satisfactory still?

General CLARK: Yes, Mr. Chairman.

The CHAIRMAN: Shall section 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18: Application of Railway Act. Shall section 18 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19: Declaratory. Shall section 19 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Thank you very much, gentlemen. I should inform the committee that it will be necessary to hold a meeting sometime next week to consider the bill dealing with the St. Croix River Bridge which we discussed in the Senate last evening. The committee will receive notice of the meeting in due course.

Thank you very much.

The committee adjourned.









First Session—Twenty-seventh Parliament  
1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE**  
**ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable A. K. HUGESSEN, *Chairman*

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No. 2

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*Complete Proceedings on Bill S-15*

intituled: "An Act to authorize the construction of a bridge across the  
St. Croix River between the Province of New Brunswick  
and the State of Maine"

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THURSDAY, MARCH 3, 1966

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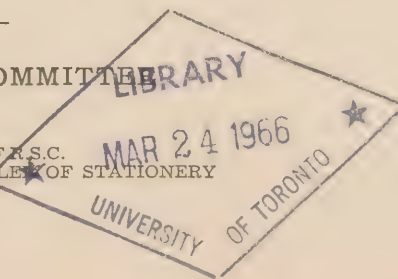
WITNESSES:

Mr. P. A. Bridle, Chairman, Interdepartmental Committee on International  
Bridges, Dept. of External Affairs; Mr. G. T. Clarke, Chief Engineer,  
Development Engineering Branch, Dept. of Public Works.

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REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966



THE STANDING COMMITTEE  
on  
TRANSPORT AND COMMUNICATIONS

The Honourable  
ADRIAN K. HUGESSEN,

*Chairman*

The Honourable Senators

Aird,  
Aseltine,  
Baird,  
Beaubien (*Provencher*),  
Burchill,  
Connolly (*Halifax North*),  
Croll,  
Dessureault,  
Dupuis,  
Farris,  
Fournier (*Madawaska-Restigouche*),  
Gelinas,  
Gershaw,  
Gouin,  
Haig,  
Hayden,  
Hollett,  
Hugessen,  
Isnor,  
Jodoin,  
Kinley,  
Lang,  
Lefrançois,  
Macdonald (*Brantford*),

McCutcheon,  
McDonald,  
McGrand,  
McKeen,  
McLean,  
Methot,  
Molson,  
Paterson,  
Pearson,  
Phillips,  
Power,  
Quart,  
Rattenbury,  
Reid,  
Roebuck,  
Smith (*Queens-Shelburne*),  
Thorvaldson,  
Veniot,  
Vien,  
Welch,  
Willis,  
Woodrow—(46).  
*Ex officio members*  
Brooks,  
Connolly (*Ottawa West*).

(Quorum 9)



## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 23, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Rattenbury moved, seconded by the Honourable Senator Bourque, that the Bill S-15, intituled: "An Act to authorize the construction of a bridge across the St. Croix River between the Province of New Brunswick and the State of Maine", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Rattenbury moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*



## MINUTES OF PROCEEDINGS

THURSDAY, March 3, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.30 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aseltine, Burchill, Connolly (*Halifax North*), Croll, Fournier (*Madawaska-Restigouche*), Gershaw, Hollett, Lefrançois, McCutcheon, McDonald, McGrand, McLean, Rattenbury, Willis and Woodrow.—16.

In attendance: Mr. E. Russel Hopkins, Senate Law Clerk and Parliamentary Counsel.

Bill S-15, "An Act to authorize the construction of a bridge across the St. Croix River between the Province of New Brunswick and the State of Maine", was read and considered.

On motion of the Honourable Senator Burchill it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

Mr. P. A. Bridle, Chairman, Interdepartmental Committee on International Bridges, Dept. of External Affairs.

Mr. G. T. Clarke, Chief Engineer, Development Engineering Branch, Dept. of Public Works.

On motion of the Honourable Senator Burchill, it was resolved to report the Bill without amendment.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,  
*Ass't Chief Clerk of Committees.*

## REPORT OF THE COMMITTEE

THURSDAY. March 3, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-15, intituled: "An Act to authorize the construction of a bridge across the St. Croix River between the Province of New Brunswick and the State of Maine", has in obedience to the order of reference of February 23rd, 1966, examined the said bill and now reports the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*



**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**

**EVIDENCE**

OTTAWA, Thursday, March 3, 1966.

The Standing Committee on Transport and Communications, to which was referred Bill S-15, to authorize the construction of a bridge across the St. Croix River between the Province of New Brunswick and the State of Maine, met this day at 11.30 a.m. to give consideration to the bill.

Senator A. K. HUGESSEN in the Chair.

The CHAIRMAN: Honourable senators, I call the meeting to order.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have before us Bill S-15, an Act to authorize the construction of a bridge across the St. Croix River between the Province of New Brunswick and the State of Maine.

The witnesses are Mr. P. A. Bridle, Chairman of the Interdepartmental Committee on International Bridges, of the Department of External Affairs; Mr. J. N. Whittaker, Officer, U.S.A. Division, Department of External Affairs, and Mr. G. T. Clarke, Chief Engineer, Development Engineering Branch, Department of Public Works.

I suppose none of these witnesses can give us evidence on the matter of principle which I see in this bill, which is as to whether we should encourage citizens of the Province of New Brunswick to find new ways of escape to the State of Maine.

In the meantime we have a map here and I think Mr. Clarke would be the person to give us the engineering details required. Mr. Bridle will give us the general presentation of the bill. Perhaps, Mr. Bridle, you could go over to the map and explain what the proposal is.

Mr. P. A. Bridle, Chairman, Interdepartmental Committee on International Bridges, Department of External Affairs: I would be very glad to explain the proposal. With your permission I will make a brief opening statement, and then perhaps you would like to ask questions. There may be some points requiring clarification.

As the bill before you makes clear, the Government of the Province of New Brunswick wishes to build this bridge between the town of Milltown and the city of Calais across the St. Croix River. This, of course, would be an international bridge between Canada and the United States. The bridge would be constructed, operated and maintained by the Government of the Province of New Brunswick in co-operation with the Government of the State of Maine.

Each of these governments would pay one-half the cost of constructing the bridge and the entire cost of all approach works and right of way within its own borders. Each government would share the cost of maintenance and operation of the bridge on the same basis. The federal Government would make no financial contribution to the bridge. The bridge would be toll free.

Procedurally there is to be an agreement between the Province of New Brunswick and the State of Maine which would cover these points I have mentioned, and others that may be necessary. In order to give this agreement its appropriate status there would at an appropriate time be an exchange of notes between the Secretary of State for External Affairs and the United States Ambassador in Ottawa relating to the agreement and indicating the approval of the two federal governments to its conclusion.

The CHAIRMAN: In other words, the governments of Maine and New Brunswick cannot make an agreement between themselves without the approval of the External Affairs Department?

Mr. BRIDLE: That is correct.

Senator WOODROW: What is the estimate of the total cost?

G. T. Clarke, Chief Engineer, Development Engineering Branch, Department of Public Works: It is \$235,000. New Brunswick's share is \$130,000, and Maine's share is \$105,000. This difference is probably due to part of the New Brunswick approach being included in the bridge contract.

Senator FOURNIER (*Madawaska-Restigouche*): Is there in existence at the present time an old bridge?

Mr. BRIDLE: Yes.

Mr. CLARKE: There is an old existing timber bridge which is now at the end of its useful life. The new bridge will be about 65 feet downstream.

Senator CROLL: What is the traffic like on the bridge normally?

Mr. CLARKE: It must be very light because it is in pretty poor shape. Heavy trucks use the international bridge five miles south.

Senator WOODROW: You say there are no tolls on that bridge?

Mr. BRIDLE: No. Maine and New Brunswick each bears its share with regard to maintenance.

Senator WOODROW: Have you any estimate of what that amount will be?

Mr. CLARKE: It is \$5,000 a year or less.

Senator BURCHILL: Mr. Chairman, I move that the bill be reported.

Senator HOLLETT: Before the bill is reported, Mr. Chairman, may I refer to the first part of clause 3 of the bill, which says:

The Province of New Brunswick (hereinafter referred to as the "Province") may, either alone or in conjunction with. . .

Is it possible for New Brunswick to construct the bridge alone?

Mr. BRIDLE: I think, sir, this is purely permissive. The clear and stated intention of the Government of New Brunswick is to build this bridge in co-operation with the State of Maine.

Senator HOLLETT: I am wondering if that word "alone" should not be deleted altogether.

Mr. BRIDLE: The Governments's law officers felt that that provision could appropriately be included, since from the point of view of the Canadian Government there would be no objection to the Province of New Brunswick building the bridge itself, should it wish to do so.

Senator HOLLETT: Is there anyone who could give authority to build the bridge alone?

The CHAIRMAN: The question might arise that perhaps the authority in Maine might say, "All right, we will let New Brunswick build the whole bridge for us."

Senator HOLLETT: Yes, but we do not know that, because it is not stated. Can the Government give anybody the right to build a bridge connecting with the United States? All we have now is an authority which is not named.

Senator McCUTCHEON: It is possible that we could get authority, and the United States might say we cannot build it.

Senator RATTENBURY: The Government of the State of Maine has already signed the necessary document.

Senator HOLLETT: But can somebody in Canada give the right to build a bridge alone?

The CHAIRMAN: Not by itself. That authority, together with authority from Maine would be sufficient, would it not?

Senator HOLLETT: I just thought I would draw that to the attention of the committee.

The CHAIRMAN: I think the wording is all right.

Senator FOURNIER (*Madawaska-Restigouche*): May I ask what is the type of navigation here?

Mr. CLARKE: Any stream that is navigable in part is considered to be navigable throughout under the Navigable Waters Act; hence approval under the Navigable Waters Act would have to be secured before the bridge could be built.

The CHAIRMAN: Honourable senators, I have a motion to report the bill, if there are no further questions.

Bill reported.

The CHAIRMAN: Shall I report the bill without amendment?

Bill reported without amendment.

Whereupon the committee adjourned.





















First Session—Twenty-seventh Parliament

1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE**  
**ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable A. K. HUGESSEN, *Chairman*

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No. 3

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*Complete Proceedings on Bill C-165,*

intituled: "An Act respecting the construction of a line of railway in the Province of Ontario by Canadian National Railway Company from the vicinity of Amesdale in the Redditt Subdivision of the Canadian National Railway in a north northwesterly direction for a distance of approximately 68 miles to a point in the vicinity of Bruce Lake, in the District of Kenora".

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WEDNESDAY, MAY 4, 1966

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WITNESSES:

*Canadian National Railway Company:* G. M. Cooper, Assistant General Solicitor; K. M. Ralston, Mining Engineer; *Department of Transport:* Jacques Fortier, Q.C., Director, Legal Services.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Adrian K. Hugessen, *Chairman*  
The Honourable Senators

Aird,	Lang,
Aseltine,	Lefrançois,
Baird,	Macdonald ( <i>Brantford</i> ),
Beaubien ( <i>Provencher</i> ),	McCutcheon,
Bourget,	McDonald,
Burchill,	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Veniot,
Isnor,	Vien,
Jodoin,	Welch,
Kinley,	Willis—(49).

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)



## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 4th, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Burchill that the Bill C-165, intituled: "An Act respecting the construction of a line of railway in the Province of Ontario by Canadian National Railway Company from the vicinity of Amesdale in the Redditt Sub-division of the Canadian National Railway in a north northwesterly direction for a distance of approximately 68 miles to a point in the vicinity of Bruce Lake, in the District of Kenora", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*



## MINUTES OF PROCEEDINGS

FRIDAY, May 6th, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aird, Baird, Brooks, Burchill, Connolly (*Halifax North*), Connolly (*Ottawa West*), Hollett, Isnor, Kinley, McCutcheon, McDonald, McKeen, Paterson, Rattenbury, Smith (*Queens-Shelburne*) and Welch. (17)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-165, An Act respecting the construction of a line of railway by the C.N.R. in the province of Ontario from the vicinity of Amesdale to a point in the vicinity of Bruce Lake, was read and examined, clause by clause.

The following witnesses were heard:

*Canadian National Railway Company:*

G. M. Cooper, Assistant General Solicitor.

K. M. Ralston, Mining Engineer.

*Department of Transport:*

Jacques Fortier, Q.C., Director, Legal Services.

On Motion of the Honourable Senator Isnor it was Resolved to report the said Bill without amendment.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

FRIDAY, May 6, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill C-165, intituled: "An Act respecting the construction of a line of railway in the Province of Ontario by Canadian National Railway Company from the vicinity of Amesdale on the Redditt Sub-division of the Canadian National Railway in a north northwesterly direction for a distance of approximately 68 miles to a point in the vicinity of Bruce Lake, in the District of Kenora", has in obedience to the order of reference of May 4th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

Adrian K. Hugessen,  
*Chairman.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

OTTAWA, Friday, May 6, 1966.

The Standing Committee on Transport and Communications to which was referred Bill C-165, respecting the construction of a line of railway in the Province of Ontario by Canadian National Railway Company from the vicinity of Amesdale on the Redditt Subdivision of the Canadian National Railway in a north northwesterly direction for a distance of approximately 68 miles to a point in the vicinity of Bruce Lake, in the District of Kenora, met this day at 11 a.m. to give consideration to the bill.

Senator A. K. HUGESSEN in the Chair.

The CHAIRMAN: Honourable senators, it is now 11 o'clock and time for the convening of this meeting. The Senate has referred to us Bill C-165, an act respecting the construction of a line of railway by Canadian National Railway Company in the north northwesterly part of the Province of Ontario.

As this is a public bill of considerable importance, I would appreciate the usual motion that we be allowed to report the proceedings of the committee and that authority be granted for printing.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: This bill was introduced in the Senate by Senator Benidickson, who is present this morning. Have you anything you wish to add before we proceed, senator?

Senator BENIDICKSON: No, thank you, Mr. Chairman. We have representatives here.

The CHAIRMAN: Yes, I have the names before me.

Senator BENIDICKSON: I think they will be more competent than I to speak on the subject.

The question was raised in the Senate the other day about the probable profit or net return that might come from this investment. This does involve, as everybody can appreciate, something in the nature of a competitive relationship with industry. The Government was given, by the Canadian National Railway, overall assurance that the enterprise should be profitable for it. However, it is perhaps not wise to present all the contractual detail to the public at large in order to protect this government company in a competitive position. There is no member of Parliament who cannot get this information or even ask a question about it here. My only point is that it might not be wise to put the financial detail on public record.

The CHAIRMAN: Thank you, senator.

Senator ISNOR: I raised the particular question when the honourable member was so ably sponsoring the bill, because I was anxious to know whether there was a sufficient return for this public expenditure. After all, we must bear in mind that the C.N.R. deficits are taken care of each year by the public. It is only fair that the public should know whether this is a wise investment, and the cost per mile, perhaps, as compared to similar work in other districts. That was my thought on the matter.

Senator BROOKS: The officials are here to give us this and other information, are they not?

The CHAIRMAN: Yes. I can give the committee the list of officials who are here. We have, for the Canadian National Railways, Mr. G. M. Cooper, Assistant General Solicitor; Mr. D. F. Purves, Assistant Vice-President; Mr. K. M. Ralston, Mining Engineer; and Mr. Rolland Boudreau, Solicitor. We also have Mr. Jacques Fortier, Director of Legal Services of the Department of Transport.

I spoke for a moment or two to these witnesses before the meeting. I asked them specifically if they had read the debate which took place on Wednesday in the Senate on this bill with a view to seeing what sort of questions were in the minds of senators. They told me they had read it. Therefore, I believe we will find they are in a position to discuss these questions. I am told that the preliminary presentation on behalf of the railway company will be made by Mr. Cooper, the Assistant General Solicitor. Should we hear Mr. Cooper?

Hon. SENATORS: Yes.

**Mr. G. M. Cooper, Assistant General Solicitor, Canadian National Railways:** Mr. Chairman and honourable senators, Bill C-165 which is before you is a bill in the usual and familiar form of branch line legislation. It relates to a proposed branch line which is 68 miles in length and is proposed to be built at an estimated cost of \$11.1 million to provide rail service to a mine site, referred to as The Griffith Mine, at Bruce Lake in northwestern Ontario.

Geographically, the branch line is indicated here on the map, which has been set up. The Griffith Mine is located at the top end of this bright red line, which is the route of the proposed branch line under discussion. These other red lines are Canadian National lines, this one being the main line between Lakehead and Winnipeg. The green line below is the Canadian Pacific Railway line, and this, running easterly from Nakina, is the National transcontinental railway.

Senator BROOKS: What is the mileage to the Lakehead?

Mr. COOPER: To the Lakehead I think it is in the order of 318 miles. The branch line is approximately 68 and I think the remaining distance is about 250 miles.

The operation at The Griffith Mine—which is primarily a Steel Company of Canada undertaking, although I believe a well-known firm, Pickands Mather, actually manage the mine—is planned for open-pit extraction of a relatively low-grade iron ore, which would be concentrated at the mine site. The concentrate would be processed physically into pellets for ease of shipment. The pellets of iron concentrate would be shipped from the mine site over Canadian National lines to Lakehead, there stock piled and then, ordinarily, would be trans-shipped to vessels for carriage by water to Hamilton.

Senator BROOKS: What is the distance from Lakehead to Hamilton, the water transportation distance? I was thinking of comparing that distance with the distance between Hamilton and the Labrador mines.

Mr. COOPER: I am sure it would be considerably less. Perhaps we would more readily know the rail distance from Lakehead to Hamilton, which of course would not be the same but would afford some rough measure, if we do

not have another one. I wonder if Mr. Ralston can inform me on the rail distance.

**Mr. K. M. Ralston, Mining Engineer, Canadian National Railways:** No, I do not have the rail distance handy. The water distance via Lake Superior would be about 800 miles.

**Senator KINLEY:** Can you calculate the distance on the map?

**Mr. COOPER:** We have the Lakehead but unfortunately we do not have Hamilton shown on this map.

**Senator SMITH (*Queens-Shelburne*):** The estimate I heard from behind me was 800 miles.

**Mr. COOPER:** Yes, I understand that it would be in the order of 800 miles.

**Senator BENIDICKSON:** It is not contemplated to move the ore by rail through to Hamilton. It is contemplated to stock pile the ore at the Lakehead in the winter?

**Mr. COOPER:** Yes. We would be happy to move it by rail, but the economics of it indicate that the regular movement would be by water beyond the Lakehead.

**Senator PATERSON:** Will you use the existing ore dock or build a new one?

**Mr. COOPER:** The existing dock.

**Senator BROOKS:** The point I raised the other day was a comparison I had made in my own mind, without knowing very much about this matter, between production in this mine and production by the Wabush people in Labrador. The rail haul would clearly not be so long in the Labrador district and the water transport would be from stock pile at Sept-Iles via the St. Lawrence. I was wondering whether The Griffith Mine was chosen because it was cheaper to get the iron ore from it than from the tremendous development in Labrador.

**Mr. COOPER:** Possibly, because of the development there. If you wish to pursue this, perhaps we should have the mining engineer rather than the legal representative. Otherwise I am apt to confuse you rather than to inform you. Would you like Mr. Ralston?

**Senator BROOKS:** Not just now, Mr. Chairman.

**Mr. COOPER:** As I understand the magnitude of the financial investment in the mine property, it is in the order of \$60 million, and the regular labour force we think would be about 500 people.

**Senator BROOKS:** There is another point. Does the \$11 million for construction include the cost of the right of way?

**Mr. COOPER:** Yes, it covers the cost of acquisition of lands. They are mainly provincial Crown lands.

**The CHAIRMAN:** There is no settlement along there?

**Mr. COOPER:** There is very little settlement, and not along the right of way itself.

As to the form of the bill, its first clause intends the authorization of the construction and completion of the line which is described, in terms of physical and financial quantities, in the schedule on the back cover of the bill; Order in Council approval is a requisite after the legislation itself is passed. Competitive tenders are provided for in the second clause. The third clause fixes the limit of expenditure at 115 per cent of the estimated cost, which limit as appears in clause 4, is \$12,765,000; borrowing authority to that extent is provided by clause 4. Provision for temporary loans appears in clause 5 and the usual guarantee of securities is in clause 6.



Senator BROOKS: This is not a guarantee that it would not cost any more than what is stated here. By Order in Council the Government could allow more money if the railroad costs more than it is estimated?

Mr. COOPER: Yes. It must not cost more than the estimate plus contingencies, except, as it says in clause 3, with the approval of the Governor in Council.

Senator BROOKS: It is a usual clause?

Mr. COOPER: It is the usual clause, yes.

Senator KINLEY: Suppose your costs go over that; what would happen in that event?

Mr. COOPER: Well, this situation would manifest itself before the day came when the last of the statutory money was to be spent and representations would no doubt be made to the Governor in Council well in advance.

Senator KINLEY: Is this cost excessive—\$163,000 per mile?

Mr. COOPER: It is a hard estimate of the costs of construction in this particular terrain.

The CHAIRMAN: This is quite a rough area.

Mr. COOPER: Yes. By way of contrast is the bill we had before the Senate last year for a short line in the area of Sarnia.

Senator KINLEY: You can build a spur two miles long without coming here?

Mr. COOPER: Six miles long.

Senator KINLEY: You have authority to do that without coming to Parliament at all.

Mr. COOPER: We have to go to the Governor in Council, but not to Parliament. But in excess of six miles its special legislation requires Canadian National to come to Parliament.

Senator KINLEY: Then do you have the company guarantee a certain amount of traffic which it can supply without your coming here?

Mr. COOPER: We have an agreement respecting the volume of traffic which supports the economics of this application.

Senator BAIRD: What about connection with the CPR line which is also in that region?

Mr. COOPER: Such connection would require construction of another 20 miles of line which would add considerably to the cost of the project and would leave unresolved problems of interchange and handling, and would substantially affect the economics of the whole proposal. We would be seeking perhaps \$15 million instead of \$11.1 million.

Senator BAIRD: Are the C.P.R. interested in that? Would they be interested in establishing a branch line from the mine?

Senator BENIDICKSON: Isn't that up to the Steel Company of Canada?

Senator BAIRD: They own the mine.

Mr. COOPER: The other railroad would require a different traffic guarantee to support the additional cost. I do not know whether there was an inquiry, but this matter now is being dealt with as between Canadian National and Stelco as an industry application to this railroad.

Senator BENIDICKSON: Are your arrangements with the Steel Company of Canada under your agreement absolutely firm to the extent that, if in a period such as we are now in—that is, a period of rising costs—115 per cent of your estimate is not adequate, are you enabled to get any better return from the Steel Company of Canada or are you stuck under the agreement to a certain amount of per ton revenue over a certain period of time?

Mr. COOPER: I would say we cannot, just as we would not want them to reopen the contract we have made. Our return from the contract would be diluted to the extent that our capital costs as built into the application here or the proposal here were inadequate. But the amount has been carefully looked at and there would be some margin in our economics to take care of this. We would not want them to be able to say "Oh, well, now it has cost us more to build this plant, so please reduce the freight rate which we have negotiated."

Senator ISNOR: Could I ask Mr. Ralston through you if the cost per mile of the average line construction during the past few years is comparable with this \$163,234 per mile?

Senator KINLEY: You are here in the interests of the railroad?

Mr. COOPER: Yes.

Senator KINLEY: You are satisfied that this is a good bargain for your company?

Mr. COOPER: Yes.

Senator ISNOR: I am not asking about the bargain; I am asking about the comparison of cost per mile. It struck me from other bills that this was a little higher than the average.

Senator BENIDICKSON: But it is in Precambrian rock.

The CHAIRMAN: I don't think that will help the committee very much. You will remember last year, in connection with the construction of this line near Sarnia which was through very flat country, the cost was \$50,000 to \$60,000 a mile. In this case the country is very rocky indeed.

Senator McDONALD: Does Mr. Ralston represent the railroad or the iron ore company?

The CHAIRMAN: He is the mining engineer of the Canadian National Railways.

Mr. COOPER: Mr. Fortier assists me here with two instances. Last year we were before this committee with respect to a 12-mile line at Sarnia where the estimated cost was \$850,000, which is very close to \$70,000 per mile. The line built for Brunswick Mining and Smelting near Bathurst in New Brunswick in 1962 was 15 miles at \$1,450,000, or slightly under \$100,000 per mile. The difference would be caused by the terrain and whether or not any major bridges were required.

Senator HOLLETT: I take it the only reason for the construction of the railroad is for the iron ore, is that right?

Mr. COOPER: The whole economics of this are based on the iron ore.

Senator HOLLETT: What is the estimated tonnage?

Mr. COOPER: The planned tonnage—

Senator HOLLETT: I don't mean that. For how many years is this likely to last?

Mr. COOPER: More and more I would like Mr. Ralston to assist me in this to give an estimate of the overall tonnage of ore available for mining in terms of the expected economics life of the mine.

Mr. RALSTON: Mr. Chairman, the official established ore reserves have been released to us by Picklands Mather and Company, which are managing agents for The Steel Company of Canada and which will operate this mining property.

Senator BENIDICKSON: Picklands Mather and Company is a world-wide mining engineering company with headquarters in Cleveland, Ohio.

Mr. RALSTON: Yes, indeed. Picklands Mather have long experience in operating mines of their own and, as managing agents, mines of other companies. Their official estimate of established reserves at The Griffith Mine is



sufficient ore to maintain a shipping rate of  $1\frac{1}{2}$  million long tons per year of iron concentrate pellets for a period of 30 years—this to an open-pit depth of 735 feet, I think it was—which would, of course, indicate total reserves, in terms of product, of 45 million long tons.

Senator HOLLETT: And hiring how many men?

Mr. RALSTON: When they get into operation, regular operation, about 450.

Senator HOLLETT: The reason I am asking this question is that we have a lot of iron ore down in Bell Island, Newfoundland. I was wondering if we could not give them all the ore they wanted.

Mr. RALSTON: Of course, Bell Island has immense reserves. It is not known how far the iron deposits extend under the sea but, as you know as well as I do, although Wabana has operated for many years, in the drastically changed climate of the iron ore industry the quality of Wabana ore is not as acceptable as it once was.

Senator HOLLETT: What is the iron ore content in the place we are considering now?

Mr. RALSTON: The Griffith Mine product will average 65 to 68 per cent iron.

Senator HOLLETT: That is after it is concentrated?

Mr. RALSTON: Yes, that is after it is concentrated and pelletized.

Senator HOLLETT: What is it now, in the raw state?

Mr. RALSTON: As crude ore?

Senator HOLLETT: Yes.

Mr. RALSTON: As mined it would average about 29 per cent.

Senator HOLLETT: I think Bell Island is 37 per cent, isn't it?

Mr. RALSTON: It is higher than that in iron—about 48 per cent.

Senator HOLLETT: That may be.

Senator BENIDICKSON: Is there not a sulphur problem?

Mr. RALSTON: A phosphorous problem. I am quite certain that if Dosco could find a market—and they have been making strenuous efforts to upgrade the ore—Wabana would continue operations.

Senator BROOKS: In making comparisons, how does the iron ore at this mine and Bell Island compare with that in Labrador? I understand they have very high concentration there.

Mr. RALSTON: They have various grades in Labrador—that is, the general area, Labrador and northern Quebec.

Senator BROOKS: In limited quantities though.

Mr. RALSTON: The ore of the Iron Ore Company of Canada at Schefferville is rather superior—that is, direct-shipping ore, as it is called, is about 54 per cent iron. At Carol Lake, where the deposits are also owned by the Iron Ore Company of Canada, which, as you know, is composed of a number of companies, I think the average grade, speaking from memory—and this is crude ore—is about 35 per cent. The company concentrates it to just about the same grade as the concentrate of The Griffith Mine. The Iron Ore Company also produce pellets from their Carol Lake concentrate. For the last three or four years production of pellets has been at the rate of about 5 million tons a year and, as you no doubt saw in the press, in the last couple of months the company have decided to increase production to about 10 million tons a year of pellets, which is double the present capacity at Carol Lake.

Senator BENIDICKSON: What is the relationship in tonnage between the open-pit crude ore and the tonnage of pellets? We are talking in terms of eventually having  $1\frac{1}{2}$  million tons of pellets.

Mr. RALSTON: Yes.

Senator BENIDICKSON: How many tons of crude ore would be involved?

Mr. RALSTON: Well, I visited the property and looked at the deposits, and studied certain reports. Picklands Mather have not issued any such figures, but knowing the approximate average grade of the ore and the average grade of the product, I arrived at a ratio of concentration of roughly three to one. That is to say, for every one ton of iron concentrate pellets produced you will have to mine and mill about three tons of ore.

Senator BENIDICKSON: Actually, that is not our problem. We are concerned about the freight of the pellets on the railway.

Mr. RALSTON: I am sorry, did I not answer your question?

Senator BENIDICKSON: Your problem and our problem is the freight, the tonnage of pellets. I perhaps raised an irrelevant question.

Mr. RALSTON: No, because the tonnage that is shipped depends absolutely on the tonnage that is in the ground as reserves, and the one relates to the other.

Senator HOLLETT: Looking at it from the investment point of view of Canadian National, would you not consider that if you put \$12 million into assistance on Bell Island you could use your own ships to handle the ore? There are 10,000 people on that island living off that ore. Do you not think that if Canadian National invested \$10 million or \$12 million or more there, it would be wiser?

Mr. RALSTON: Dosco have been in the business for years.

Senator KINLEY: But they have been prepared to give it to you.

Mr. RALSTON: They have made every effort for the last six or eight years to improve their product and to find a market, and they know the business; but, unfortunately and most regrettably, they have not been successful, so they have been forced to close Wabana. We could hardly set ourselves up as iron ore experts and undertake to go in and do what Dosco have been unable to do under the changing situation of today in the iron ore industry.

Senator HOLLETT: I think Stelco could. I have no objection to the bill, but I am thinking of 10,000 souls on Bell Island, and with some help in pelletizing that crude ore on Bell Island they could be kept there and thrive, in my opinion. But here is the Canadian National, a Government agency, investing \$12 million with the hope that the mine may last a mere 30 years. Bell Island had been there since '95.

Mr. RALSTON: When I said 30 years, I stated that was the estimated figure established by Picklands Mather. I do not mean that this represents all the ore that is there, by any means. I would say that you could probably count on double this amount of ore, and perhaps even more. The ore bodies have not been delimited.

Senator KINLEY: What advantages are there over the mining operation used in Newfoundland? This is surface mining, is it not?

Mr. RALSTON: Yes. It is open pit, and that is an advantage right away.

Senator KINLEY: Is it more economic for the steel company to operate that than to operate Bell Island? Dosco owns Wabana Mine, I think, and probably this.

Mr. RALSTON: No.

Senator McCUTCHEON: It is the Steel Company of Canada.

Senator KINLEY: The Steel Company of Canada is going to build a big plant in Quebec, and I think they are stopping it because of the austerity at present—that is, the inflation.

Senator McCUTCHEON: I think that is Dosco you are referring to.

Senator KINLEY: Yes, that is Dosco.

Mr. RALSTON: But Dosco has announced plans for a plant on the south shore of the St. Lawrence.

Senator KINLEY: This is not Dosco?

Mr. RALSTON: No, The Griffith mine has nothing whatever to do with Dosco. But to answer your question, in the case of an open-pit mine the costs of extracting the ore are almost always less than the costs of extraction from an underground mine.

Senator KINLEY: No trouble with phosphorous?

Mr. RALSTON: No trouble with phosphorous or with any other deleterious material.

Senator BROOKS: Is there not open-pit mining in Labrador?

Mr. RALSTON: Yes.

Senator HOLLETT: There is some on Bell Island off Newfoundland. I have been down there. The mine goes two miles out under the sea, and there is enough ore down there to last forever.

Mr. RALSTON: Well, it goes out for a considerable distance, that is right. It is a tragedy that the mine, after all these years, has to be closed down.

Senator AIRD: Having regard to the freight rates that will be established, at what time do you visualize the CNR getting its money back from its capital investment?

Mr. RALSTON: Well, we have to take the freight rates that have been agreed to—mind you, in the traffic guarantee agreement there is nothing whatsoever about freight rates. Freight rates are a separate matter which are settled, first of all, between Stelco and the freight sales department of the Canadian National. Those freight rates are not fixed for all time. There is always a proviso that they are subject to change authorized by the Board of Transport Commissioners for Canada. Having settled the freight rates, we then base our economics, of course, on the freight rates and, in turn, we settle the terms of the traffic guarantee agreement.

Senator BROOKS: The cost of production is likely to go up this year or next year, is it not, on account of a strike that is pending? The cost of production at the mine will go up, as I understand it, because—

Mr. RALSTON: Well, of course, the mine has not started operations yet. The company is still in the process of its planning. Until we get approval from Parliament, of course, they can hardly go ahead and make a huge expenditure on the mere assumption—

Senator BROOKS: They will have to look at the plan again, and anticipate what the costs are going to be. From what I have read in the *Financial Post* I gather the cost of producing iron ore is going to go up by about \$1.25 a ton.

Mr. RALSTON: Do you mean the labour costs?

Senator BROOKS: Yes, the wages at the mine.

Mr. RALSTON: That is, you might say, really Stelco's concern, but they have no doubt taken it into account. If there is any substantial inflation it is usually reflected sooner or later in an increase in the price of the product.

The CHAIRMAN: There has been a great deal of interest expressed in the provisions of the contract you have with Stelco and their guarantee of freight. I think we should have some details of that, in so far as you feel you can properly give them. We do not want to embarrass you by asking you for information that you think might be useful to competitors, or something of that kind. What is the



agreement with the Steel Company as to the amount they will pay, and its relation to the cost of the enterprise?

Mr. RALSTON: Yes, Mr. Chairman, with respect to all these branch lines we have a traffic guarantee, but the traffic guarantee is not designed to keep us completely whole. If the mining company for some unforeseen and remote reason have to close down then the traffic guarantee will not return our capital expenditure, but it does provide an earnest of the mining company's intention, and it pays our fixed charges. If, for some reason, for a period of time the mining company have to suspend shipments then the impost, which is always attached to the traffic guarantee, goes into operation, and this impost per ton of deficiency multiplied by the guaranteed tonnage equals the interest on our investment, plus our fixed maintenance, so that during the life of the traffic guarantee our fixed charges are covered.

Senator BROOKS: The costs of depreciation would be paid in that time—in the 30 years?

Mr. RALSTON: No, the traffic guarantee does not extend for that period. It extends for a certain period, and it provides that the mining company will ship a certain tonnage per year during the life of the traffic guarantee, and for every ton that they fail to ship below that guaranteed tonnage they will pay us an impost per ton of deficiency.

Mind you, they are not legally obliged to ship any more than what is specified in the traffic guarantee, but we make sure that while the specified tonnage is not in any way—at least, this is our object—an onerous handicap to the mining company, it does at the same time, if the mining company merely meet their legal obligation, make a certain contribution to our system overhead. There is an additional safeguard in that the mining company are spending \$60 million of capital, and you may depend upon it that they will do everything possible to produce right up to capacity; otherwise they have unused capacity for which they have paid out capital money.

Senator BROOKS: Is it the same guarantee that you have with the Heath Steele Mines, for instance?

Mr. RALSTON: It is the same principle exactly.

Senator BROOKS: And at Pine Point?

Mr. RALSTON: That is a horse of another colour. The Pine Point line is not one of our branch lines. We have no capital in it, senator. The capital for that line, as you know, was put up by the Government of Canada.

The CHAIRMAN: Suppose everything goes perfectly and the mine starts to operate, and it operates annually at the minimum and ships the minimum. What effect will that have on the finances of the Canadian National Railway?

Mr. RALSTON: If everything goes as is hoped and expected, Mr. Chairman, they will ship not at the minimum but at the designed capacity of the plant, which is considerably above the minimum. When you say "the minimum" I presume, Mr. Chairman, you mean the guaranteed tonnage?

The CHAIRMAN: Yes.

Mr. RALSTON: They will do everything possible, of course, to ship at their designed capacity because they have spent the capital money to install that capacity, and they have designed that capacity in accordance with the requirements of the market.

The CHAIRMAN: If that happens what will be the effect on the revenues of the Canadian National Railways?

Mr. RALSTON: If they operate at 1.5 million tons a year, which they have every expectation of doing, especially since they are a captive industry, there will be what we regard as a satisfactory contribution to our system overhead.

That is to say, the operation will cover our full costs of transportation, the interest on our capital, and will over a period of years return that capital and leave an excess as a contribution to system overhead.

Senator ISNOR: What is that period? You have referred to a period; what is it?

Mr. RALSTON: We based our economics—and this has no reference to the period of the guarantee—on a period of 25 years.

Senator HOLLETT: Are there any people living in that area at the present time?

Mr. RALSTON: As doubtless you know, Red Lake is quite a centre around which there are flourishing gold mines. There are people around Ear Falls, and there is some lumbering and pulpwood activity.

Senator RATTENBURY: This line will serve other interests, will it not?

Senator HOLLETT: That is why I asked that question.

Mr. RALSTON: Yes, we hope and expect it will.

Senator BURCHILL: Under this act you have authority to issue securities or bonds, to provide the funds for the building of this branch line.

Mr. RALSTON: I think Mr. Cooper can answer that.

Senator BURCHILL: When you say that the cost of operation would be paid as well as the interest, do you include the cost of land financing, the sinking fund, and so on?

Mr. COOPER: Amortization of the investment is in the economics, senator. The estimated return from this line will amortize the cost of it.

Senator BURCHILL: Over a 25 year period?

Mr. COOPER: Yes.

The CHAIRMAN: I gather from what the witnesses have said, the position is that if the mine is not as successful as they hope the guarantee will at least give you your operating expenses and charges of that kind. If, on the other hand, it is successful and reaches the maximum, it will contribute to the—

Mr. COOPER: To the system's indirect costs, yes.

Mr. RALSTON: If they do only what is specified in the guarantee there will be a small contribution. If they do what they have the capacity to do, there will be a substantially larger contribution.

Senator McCUTCHEON: If the Steel Company of Canada is able to invest \$60 million on this, I do not think we should spend too much time on the Canadian National Railways' proposal.

Senator KINLEY: They have not spoken yet.

Mr. RALSTON: Of course, that is true; but if a company is willing to invest a very large sum of money, it does not always follow it is a sound operation for us to go into, and we want to make sure that it is a sound operation.

Senator McCUTCHEON: You said it is a sound operation.

Mr. RALSTON: Yes, but we have to check it; we don't accept their word for it.

Senator AIRD: Do you have independent line consultants?

Mr. RALSTON: No. We go in and have a look at the property and satisfy ourselves that it is a viable operation.

Senator BENEDICKSON: You are a professional mining engineer?

Mr. RALSTON: That is right, senator.

The CHAIRMAN: Any further questions? One question that arose on second reading, which I think the Leader of the Opposition, Senator Brooks, raised, is



in connection with some of these other guarantees. We have had a number of these in the past eight or ten years of lines under agreements with special industries. I think you raised the question whether those have been carried out and how far they have been successful.

Senator BROOKS: I did, Mr. Chairman. And a few moments ago I asked, along the same line, for a comparison of these other mines, and whether the railways had lost money or not through these branch lines which had been built up to the mines in other parts of the country on the same terms as they propose to build this line.

Mr. RALSTON: Since the end of the war we have built 13 branch lines.

Senator BENEDICKSON: And the mileage is terrific.

Mr. RALSTON: It is about 800 miles altogether.

Senator BENEDICKSON: Then it is substantial?

Mr. RALSTON: Yes; and the only one in which we ever had to collect an impost, that is to say, in which the mine company has not for a period fulfilled the obligation under the traffic guarantee—fulfilled the obligation in so far as tonnage of shipments is concerned—is Heath Steele Mines in New Brunswick. They suspended production for about three years, for reasons over which they had no control. They began production in the mid-fifties, at the very peak of base metal prices. They produced copper concentrate, zinc concentrate, and lead concentrate. They no sooner got into production than the prices of base metals fell very substantially. When I say "very substantially," I mean that prices were cut in half. At the time of initial production, copper was about 46 cents, and zinc and lead about 18 cents a pound. Very soon after the company began production copper dropped to about 23 cents, and lead and zinc to about 8 or 9 cents a pound. The company found that it had an exceedingly refractory ore—that is, a difficult ore to treat—and these two factors—falling metal recoveries and prices—forced the mine to close down for a time. With solution of their metallurgical problems and increases of metal prices, the company resumed production and have been operating ever since.

Senator BROOKS: Well, you cannot take one or two years, for instance, and say a mine has been a success. This mine will have to run for 30 years before you know whether it is actually a success or not.

Mr. RALSTON: I can hardly agree with that.

Senator BROOKS: I am not criticizing. The point I tried to make the other day, and about which I am not altogether satisfied, is that in the development of the mines in Labrador, where we have mountains of iron ore, it could have produced and been shipped to Hamilton, and these other places, probably cheaper than from this mine. This is the general criticism I was making. Of course, I am not an engineer.

Mr. RALSTON: It must be remembered that the people who have leased this property for 75 years also have a large interest in Wabush Mines. In considering the ore they are going to get from Wabush, they must have concluded that they also required ore from this mine. They are paying a royalty to the owners of the mine—that is, Iron Bay Mines Limited—of 50 cents per ton shipped.

However, in answer to your earlier question, I have already cited the one instance in which we had to collect an impost for a few years. All our other branch lines have been wholly successful, and all lines for which we sought Parliamentary authority are making a substantial contribution to our system overhead.

Senator AIRD: What is your forecast as to the time period within which the capital invested will be returned to the railway? In this regard what has been your experience relating to the return of the capital invested?

Mr. RALSTON: In every case the actual cost of construction was less than our estimated cost of construction.

Senator AIRD: The point is that the return on capital invested to the CNR came back within a reasonable target date of entering into the contract.

Mr. RALSTON: In some cases the lines are completely paid for. In other cases, they are still being paid for year by year, and the situation as a whole is very healthy.

Senator BAIRD: What is the name of the owner of the mine?

Mr. RALSTON: It is owned by Iron Bay Mines Limited, which company leased the property, leased the ore deposits, to Stelco under an arrangement which gives Stelco the right to mine the ore for a period of 75 years in consideration of paying Iron Bay Mines Limited a royalty of 50 cents per ton of iron concentrate shipped.

The CHAIRMAN: Are there any further questions that honourable senators wish to ask?

Senator PATERSON: I would like to point out that in the *Montreal Gazette* this morning appeared an article about General Motors laying off men because of lack of demand for cars. That has a very direct effect on the iron ore industry. I would like to point out that guarantees are very important, and I presume that Canadian National will have themselves well protected. However, I suppose this committee realizes that for a road built in 1962, compared to a road built today, the interest on the money was 4 per cent as compared to today's 6 per cent. These things are very important in considering this bill. There is a nervousness in the market about a possible depression. New York had a bad break this morning and had a bad one yesterday.

That should not affect the risk of developing our country at present, but it is something to consider. I presume that the Canadian National is very much alive to the situation and that so is the Steel Company of Canada?

Mr. RALSTON: Yes.

Senator PATERSON: These traffic guarantees are quite important.

The CHAIRMAN: I think you would agree with me, senator, that if we are to get any guarantee from anyone, the Steel Company of Canada is about the best company to get a guarantee from.

Senator BENEDICKSON: Senator Paterson raised another question and I would like to get a little further information on it. You are familiar, Mr. Ralston, with the iron ore dock, the arrangements for loading iron ore from rail cars to ships at the Lakehead. Another customer of yours is, of course, Steep Rock Mines on another line almost directly south of this projected area. The senator wanted to know whether, as a result of this development, you were contemplating having to come to Government for further expenditure of a capital nature on the iron ore dock.

Mr. RALSTON: Is the sense of your question that as a result of this development, the iron ore dock would be operating at full capacity and therefore we would be faced with a situation where we would have to increase it?

Senator BENEDICKSON: That is right.

Mr. RALSTON: At the moment the iron ore dock has sufficient capacity to handle the output of Caland and of Steep Rock and of this mine.

The CHAIRMAN: In other words, you do not envisage, as a result of this project, that, next year or the year after, you will require to come to Parliament for an extra few million dollars for addition to the dock that is in Port Arthur?

Mr. RALSTON: Not as a result of this development, Mr. Chairman.

Senator BROOKS: They can come, under the bill, if they wish.

The CHAIRMAN: Has the committee heard sufficient evidence in regard to this bill? Is there anything that any senator wishes to ask? If not, is the committee willing to consider the bill?

Senator KINLEY: Is the Steel Company of Canada here? Are they coming before the committee?

The CHAIRMAN: There is no representative of the steel company here.

Senator KINLEY: Should not there be?

Senator BAIRD: Why?

Senator KINLEY: Because they are thinking of giving a guarantee.

Mr. COOPER: The railway has the steel company's contractual guarantee.

Mr. RALSTON: It is signed.

The CHAIRMAN: I do not know what we could ask the steel company to say, except that they signed the guarantee, and to explain it.

Senator BROOKS: Mr. Cooper explained to us the agreement that exists with the steel company.

The CHAIRMAN: Is the committee ready to consider the bill?

Hon. SENATORS: Yes.

The CHAIRMAN: Section 1, construction and completion. Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 2, competitive bids or tenders. Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 3, maximum expenditure. Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 4, issue of securities.

Senator ISNOR: I would like to have the situation clarified in regard to sections 4 and 5. The cost of construction is \$11,100,000, but they provide here for borrowing authority for \$12,765,000.

Mr. COOPER: Mathematically, that is the 15 per cent on top of the estimated cost. It is the contingency clause.

Senator ISNOR: I wished to have that clarified and put on the record.

The CHAIRMAN: I think that has been a feature of each one of these bills which have been passed. Does that satisfy you, senator?

Senator ISNOR: Yes.

The CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 5, temporary loans. Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 6, guarantee, form and terms, guarantees may be general or separate. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 7, deposit of proceeds of sale, etc., of securities. Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Section 8, report to Parliament. Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Carried. Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is agreed. Is there a motion to adjourn.

The committee adjourned.





First Session—Twenty-seventh Parliament  
1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

The Honourable H. de M. Molson, *Acting Chairman*

No. 4

*Complete Proceedings on Bill C-153,*  
intituled: "An Act to amend the Aeronautics Act"

WEDNESDAY, MAY 11, 1966

WITNESSES:

*For the Department of Transport:* Mr. J. R. Baldwin, Deputy Minister;  
Mr. Jacques Fortier, Director of Legal Services; Mr. M. M. Fleming,  
Air Services Branch.  
*For certain international airlines:* Mr. Murray E. Corlett, Q.C., Ottawa.

REPORT OF THE COMMITTEE

APPENDIX

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966





## MINUTES OF PROCEEDINGS

WEDNESDAY, May 11, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 a.m.

*Present:* The Honourable Senators Aird, Beaubien (*Provencher*), Fournier (*Madawaska-Restigouche*), Gershaw, Haig, Hays, Hollett, Lang, McDonald, Molson, Rattenbury, Thorvaldson and Willis.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and on motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Molson was elected Acting Chairman.

Bill C-153, "An Act to amend the Aeronautics Act", was read and considered clause by clause.

On motion of the Honourable Senator Haig, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

*For the Dept. of Transport:* Mr. J. R. Baldwin, Deputy Minister; Mr. Jacques Fortier, Director of Legal Services; Mr. M. M. Fleming, Air Services Branch.

*For certain international airlines:* Mr. Murray E. Corlett, Q.C., Ottawa.

On motion of the Honourable Senator Thorvaldson, a brief submitted by Mr. Corlett was ordered to be printed as an appendix to these proceedings.

On motion duly put it was resolved to report the Bill without any amendment.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,  
*Assistant Chief Clerk of Committees.*

## REPORTS OF THE COMMITTEE

WEDNESDAY, May 11, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill C-153, intituled: "An Act to amend the Aeronautics Act", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

H. de M. Molson,  
*Acting Chairman.*

The Standing Committee on Transport and Communications to which was referred the Bill C-153, intituled: "An Act to amend the Aeronautics Act", has in obedience to the order of reference of May 10th, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

H. de M. Molson,  
*Acting Chairman.*

**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Wednesday, May 11, 1966.

The Standing Committee on Transport and Communications to which was referred Bill C-153, to amend the Aeronautics Act, met this day at 11 a.m.

Senator HARTLAND DE M. MOLSON, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: Honourable senators, we have before us Bill C-153, to amend the Aeronautics Act, and we have appearing before us witnesses from the Department of Transport, and also Mr. M. E. Corlett, Q.C., representing certain international airlines.

If it is your pleasure, I suggest that we ask the Deputy Minister of Transport, Mr. J. R. Baldwin, to go over the bill and perhaps when we come to any clause where there is any contention, we could then pause at that point and hear what is to be said, if in fact there is any opposition. Does that meet with your approval?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: We should have the usual motion to authorize the reporting and printing of the proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: We also have with us Mr. Jacques Fortier, Director of Legal Services, and Mr. M. M. Fleming and Mr. T. McGrath of the Air Services Branch, Department of Transport.

J. R. Baldwin, Deputy Minister of Transport: Mr. Chairman and honourable senators, the bill itself does not have any one single theme. There are a series of proposed amendments which deal with several subjects, and perhaps the best thing would be to mention the principal subjects in the order in which they are dealt with in the bill, and then revert to the clauses in the order of presentation.

One of the subjects is a section in the Aeronautics Act regarding the charges which may be made for the use or provision of the facilities which are required for the operation of aircraft. There are charges for this use presently in existence which have been made under the Financial Administration Act and which are adjusted from time to time by the Governor in Council.

There is a wide variety of different types of charges, such as landing fees, terminal use fees, and so on. When we had a problem regarding a proposed trans-Atlantic service charge some years ago, an idea which has subsequently been dropped, the Department of Justice advised us that they felt that in the long run we would be better advised to have a section granting the authority for the making of charges placed in the Aeronautics Act, rather than continuing to rely on the Financial Administration Act. It is in consequence of this suggestion that the proposed amendment is now included in this bill.

The amendment takes two forms. The first is the provision that a charge may be made for actual use of a facility by an aircraft—that is a specific use that can be traced in time and in the physical sense. An airport landing fee is the easy example to give.

The second is a provision that a charge may be made for availability of facilities or service in a general sense which would apply in those instances where we cannot prove or demonstrate actual use, yet we know the facility has to be provided and is used by the airlines.

This latter is not a new concept in any sense of the word. There are charges of this sort in existence in other countries, and it is the sort of charge that has been envisaged by the International Civil Aviation Organization in its discussions on charges. The best example I can give of the type of thing we have in mind is that a specific type of radio aid or navigation ground aid might be required by general aviation. It might be of a nature which we, or the Government—the Treasury Board—decided should be put on a user charge basis. But it is automatic in its working, so we would have no particular knowledge as to whether Air Canada or Canadian Pacific or the Timothy Eaton Company executive jet, or any other plane, was using that facility or that set of facilities on a given flight or a given day, because it works automatically from the system. Therefore we need to have the right to make a charge, based on the availability of facilities.

These are the two basic concepts, user charges, directly related to proven use, and charges where a service is provided on an availability basis—where we know it is used but cannot measure it.

It would be our intent under this provision to transfer, in due course, the present charges that are presently set up by order in council under the Financial Administration Act to the provisions of the Aeronautics Act, if these are passed. We do not contemplate at the present time any new or radical changes in the system of charges.

The next principal section in the bill is a series of technical clauses, which I will not explain in detail at this time, because I think that the answers can more easily be given by technical staff when the clauses are considered in detail. They relate to matters of air safety in certain new areas where we have found it necessary to seek specific jurisdiction in regard to technical regulation and air safety—with one possible exception, that is, section 2(1)(k), which relates to maximum working hours for air crew. This is not new. It is a transfer from Part II to Part I of the act. The reason is that this clause, which was originally included in the act some years ago, possibly through error, was put in Part II, which is the section dealing with the Air Transport Board and economic regulation. In fact, the regulatory aspects of air crew working hours are a safety measure, so far as the department's jurisdiction is concerned. This amendment transfers the clause from Part II to where it properly should be, Part I, which deals with technical and safety matters.

There are certain provisions spread in two or three clauses which deal with boards of inquiry to investigate accidents. I think the necessity for this is obvious. We have had boards of inquiry, and we have regulations dealing with that now. These have been made in the form of regulations under the broad powers of the Aeronautics Act.

Here again, the Department of Justice advised us some time ago that because of the importance of the subject matter we should make specific reference to these powers in regard to accident investigation in the act itself, and there are a series of clauses dealing with that.

A number of the amendments deal with the powers of the Air Transport Board. The principal items I should mention in this connection are, first, that there is a proposed increase in the size of the Air Transport Board from three members to five members, to take care of the increasing volume of work.



The second is a change in regard to the appeal procedures that presently exist in the act. The present procedures have certain anomalies in them which have been recognized for some time. When the Air Transport Board grants a licence for a new air service, the granting of licence must be subject to the approval of the minister even though subsequent amendments by the board to that licence, which may change it in major fashion, do not require ministerial approval. In addition, there has been a right of appeal to the minister by a person denied a licence by the Air Transport Board or who as a licence holder has had a sanction imposed upon him.

The inconsistency is that the right of appeal existed only for those persons who were denied certain things or had a sanction imposed upon them. Other interested parties to a case felt their right of appeal was being overlooked, and in fact it was not possible for them to appeal under the act.

The basic change is a removal of the requirement that an initial licence granted by the board must have the approval of the minister so that the board's jurisdiction is clear cut in regard both to initiating action in granting licences and the broadening of appeal so that any interested party who is involved in a board decision may have the right of appeal.

Mr. Chairman, I think those are the principal clauses. I believe there are one or two lesser ones I have not commented on which perhaps could be dealt with seriatim, if that would be satisfactory.

The ACTING CHAIRMAN: Yes, thank you, Mr. Baldwin. If that meets with approval, we might return to clause 1 of the bill and consider that. As we mentioned, Mr. Corlett is appearing for five international airlines, and has expressed an interest in section 1 of the bill. Would it perhaps be your pleasure to hear him at this point?

Hon. SENATORS: Agreed.

Mr. M. E. CORLETT, Q.C.: Mr. Chairman and honourable senators, my name is Corlett, and I am a colleague of Mr. Gordon MacLaren, Q.C., who is sitting beside me. This is a joint effort on our part, although I have been elected to be the spokesman. We are a law firm in Ottawa, and with reference to Bill C-153 we are acting for five international airlines: Pan American World Airways, Trans World Airlines Incorporated, an American airline; KLM-Royal Dutch Airlines; SAS, which is the Scandinavian Airlines System, and Irish International Air Lines.

Our interest relates only to clause 1 of the bill, in which it is proposed to add a new section to the Aeronautics Act, namely section 3A. This matter, of course, has been before Parliament off and on over the past few years. There was a Bill C-117, which was an amendment to the Aeronautics Act, introduced in the House of Commons in December, 1963, but because of opposition that developed and perhaps for other reasons, the bill, as far as I remember, never reached the Senate.

In fairness, I must say that our clients will readily admit that the present version of section 3A contained in this bill, C-153, from their point of view, is infinitely preferable to what appeared in the earlier bill two or three years ago.

The purpose of section 3A is to provide statutory authority for the imposition of charges which would be paid by airlines, both domestic and international, which use facilities provided by the Department of Transport and also facilities which are available. This availability feature, of course, has been a sore point in the past with the international airlines, because it was felt they might be charged for services which, although technically available, they might not necessarily need, because this is a fast-moving industry from the technological point of view.

However, in paragraph (b) of section 3A in the bill before you this morning it will be noted that this right to levy an availability charge is

restricted to flights within Canada. The minister, when piloting this bill through the House of Commons, was not crystal clear as to what he had in mind by a flight within Canada, at least it would appear so from a perusal of *Hansard*. However, I am assuming—and I presume the Department of Transport officials will correct us if we are wrong in this respect—that this contemplates a charge with reference to an international air flight which might fly at one point of time over the territorial jurisdiction of Canada but the plane would not land within Canadian territory.

However, as far as paragraph (b) is concerned, our clients cannot have any objection to it—this is the availability charge—in its present form because Canada has the right legally to impose a charge of this kind. This was a major change that appeared in this bill, and this will be satisfactory to our clients.

Turning now to paragraph (a) of proposed section 3A, it will be noted it is broken down into two parts, and the criterion used in paragraph (a), as far as imposition charges are concerned, is not on availability of service but use of service by a particular aircraft. So I suppose the relationship between the Department of Transport and the company owning a particular aircraft that requires certain information or services provided by the Department of Transport would be based on the law of contract. There again, of course, there cannot be any dispute as to the right of Parliament to impose a charge of this kind.

However, it will be noted in connection with paragraph (a) that the user charge is not restricted to flights within Canada. This raises a reservation which is mentioned in the memorandum which, at the request of Senator Hugessen, we brought with us—and I believe copies have been distributed for you. But what is to happen with reference to a user charge imposed by the Department of Transport with reference to an international flight that will not touch down on Canadian territory, but which might be several hundreds of miles from Canadian shores? I am thinking particularly of the North Atlantic, where as a result of arrangements entered into in the late forties as a result of the Dublin Conference of ICAO, the International Civil Aviation Organization, Canada voluntarily assumed jurisdiction over what would be roughly the northwest quadrant of the North Atlantic as far as facilities in connection with trans-Atlantic air traffic was concerned.

I raise this question as to whether the Government, through the Department of Transport, intends to impose a user charge, for the sake of argument, on Pan American planes flying from London to New York that at no time would be nearer than, say, 100 miles to the Canadian shore, because as we see it this problem is really a world-wide one. You as legislators are looking at it from the point of view of Canada, but other countries might deal with the matter in the same way. From the point of view of international airlines, this might cause difficulties and confusion, and for that reason I suppose you have a very good reason why the International Civil Aviation Organization was created as an agency of the United Nations arising from the Chicago Treaty of 1944.

This matter of user charges with relation to aircraft while operating over the high seas was the subject of an international conference under the sponsorship of ICAO in 1958, and I suppose that being an international agency things move slowly, but the point is that this matter is now to be the subject, as I understand it, of a major ICAO conference to be called the Charges Conference. I understand that provision for it has been provided for in the 1966 estimates of ICAO, but for one reason or another it is not likely that a conference to deal with this problem, user charges while operating over the high seas, will take place until early 1967. It would seem in this type of case that this is a problem that can better be solved internationally or under the auspices of an international agency such as ICAO, to which Canada has contributed a great deal and of which it is an important member.

I am speaking only of user charges that might be imposed against aircraft with reference to flights over the high seas and not charges for flights over Canada. Our clients' view is that it might be better for the Canadian Government, and through it Parliament, to delay dealing with the right to impose a user charge with reference to flights over the high seas until after this major ICAO 1967 conference is held. That is what prompted us to suggest a slight amendment in the wording of paragraph (a)(i) of the proposed section 3A. Our amendment would have the effect of restricting the right to impose a user charge against aircraft while the aircraft is operating within the territorial jurisdiction of Canada.

As an alternative, and quite conceivably, the Government might say, "We have no intention of doing this," and Parliament might say that the Government is correct. But I hope I have indicated to you the problem that is facing the international airlines. Supposing the Canadian Government, acting under the authority of new section 3A (a), imposes unilaterally user charges against a foreign aircraft while operating beyond the territorial jurisdiction of Canada, and then the ICAO conference next year comes up with some different form of solution. I would like to pose certain questions, which I presume the Department of Transport officials here today could answer, and I think it would be in the public interest that they do so.

Firstly, assuming that section 3A is enacted in its present form, does the Canadian Government propose to impose charges for the use of facilities only by aircraft while outside Canadian territorial jurisdiction? That will be my first question.

My second question would only require an answer if the first question is answered in the affirmative. Would such action on the part of the Canadian Government be consistent with a possible ICAO solution to this problem of user charges to be imposed against aircraft while flying over the high seas?

The third question would be: Would such user charges be imposed before ICAO has taken a definite position on this particular point, presumably as a result of the 1967 ICAO charges conference which is now on the agenda?

So much for that point. The only other observation we have, and it is contained in the memorandum and I will not detain the committee at any length on it because it is a matter that has come up before: the proposed section 3A indicates that the Governor in Council will have the right to impose user charges. The Honourable Mr. Turner, when speaking to this bill on second reading in the House of Commons on March 31, indicated that in his judgment this was not a form of tax. It had been alleged by some member or members that, in effect, you are permitting, as a result of the wording used in the proposed section 3A, the right of the executive to impose taxes by order in council. The minister said, no, that he did not think it was, that a charge of this kind would not be a form of tax.

From the point of view of our clients, we would take the position that it would be a form of tax, because of the element of compulsion.

To take up that assertion, I would refer the committee—and we mention it in our written submission—to the recent publication prepared by the Canadian Tax Foundation at the request of the Canadian Tax Structure Committee of the federal and provincial governments, entitled, "Occupancy of tax fields in Canada." On page 2 the author gives what admittedly she says is a rule of thumb definition, but she considers it to be adequate as to what is a tax. She says:

—the element of compulsion seems to provide as useful a rule of thumb as any as to what is a tax—

For that reason, we would take the position, from the point of view of the airlines, that the imposition of a charge, whether it be an availability charge or



user charge, would represent a form of tax. That being so, as we have indicated in our submission, we refer this committee back to the debates that occurred in the 1959 session of Parliament when the export tax on electricity was being transferred from a special statute, the Export of Electricity Act, to the Excise Tax Act. Up until 1959, for years the Governor in Council was given the right to impose the tax up to a certain maximum. In this case, of course, there is no maximum. The legislators, both in the other place and in the Senate, took a very strong view on the matter at that time, and we make mention of that in our submission. To be fair, it is true that the Honourable Mr. Turner, in the house, did indicate on March 31:

I can assure the honourable member that these charges will not be imposed without consultation with the air lines concerned and we have already given them our undertaking that the charges will be reasonable.

On behalf of our clients, I would like the Department of Transport officials here today to affirm that understanding of the minister which he gave in the House of Commons, at page 3669 of *Hansard* for March 31 last.

Mr. Chairman, I think those are the views we wish to present to the committee on the part of our clients, namely, the five international airlines.

The CHAIRMAN: Thank you, Mr. Corlett. Honourable senators, first, do you wish to have this memorandum printed as an appendix to the proceedings?

Senator THORVALDSON: I so move.

Senator HAIG: I second the motion.

(See appendix to today's proceedings).

The CHAIRMAN: Perhaps you should return at this point, Mr. Baldwin, and deal with clause 1, about which apparently there is a little controversy.

Senator THORVALDSON: Mr. Chairman, may I ask Mr. Baldwin a question first? Mr. Corlett, suggested that paragraph 3(a) gave the minister a right to make a charge against an airline even if the flight were not over Canada—the flight might be 100 miles away from Canada, above the ocean. Does this paragraph, in your opinion, give such a power to the minister?

Mr. BALDWIN: Yes; and we are making such charges now and the airlines are not objecting.

Senator THORVALDSON: What is the purpose of that charge?

Mr. BALDWIN: If I might go back for a moment, I think Mr. Corlett has placed his questions in a very fair manner. I think I can satisfy him with the answers, and in so doing answer the question you have raised, sir. We have, I suppose, 18 to 20 international airlines operating into Canada, most of which also operate in areas contiguous to Canada where they may make use of some of our air traffic control and other facilities. They are "in range", so to speak. There are a number of airlines that operate in this contiguous sense and also pass through our air space without actually landing in Canada. Some 15 to 18 airlines actually serving Canada have not seen fit to raise any opposition to this amendment. Of the five which Mr. Corlett mentioned I think two do serve Canada and three do not, although they operate contiguous to Canada in crossing the Atlantic.

We had discussed these questions with the International Air Transport Association which represents international airlines, and as Mr. Corlett indicated, made some adjustments in paragraph (b) because of what we felt were legitimate fears on their part, and they have expressed themselves as satisfied.

To give a specific example of how this would work, perhaps I could refer to what is now known as our telecommunications charge. We maintain as part of the general network of aviation support which includes air traffic control,

weather meteorological services for flying, and radio aids, a very extensive communications network composed of a wide variety of different types of teletype circuitry, land lines, and microwave, that crosses the whole of Canada and has international connections to the United States, across the Atlantic and the North and South Pacific. This network upon occasion is very useful to an aircraft when it is flying in the air for the purpose of conveying some message relating to operation—not a message that is part of our responsibility but basically a company message, which may be, for instance, between dispatchers.

We established the principle some time ago of a charge system so that if an airline asks to send a message over our network we make a charge which we think is reasonable relating to the cost. This charge may apply on a domestic flight or an international flight.

The charge on the North Atlantic is \$20 if an airline wishes to make use of this message movement service. The aircraft may be moving from Montreal to Paris, from Toronto to London, from Vancouver to Amsterdam—it does not matter; if they call on our facilities to send a message we impose this charge.

Equally, we have been imposing a charge—and so far as we are aware there have not been airline objections—if an aircraft, let us say coming from New York to London and passing along the Canadian coastal area, even though not in Canadian air space, says, “We would like you to transmit the following message.”

Senator RATTENBURY: What is the basis of the charge?

Mr. BALDWIN: We do not feel really that there should be any discrimination, let us say, between a B.O.A.C. flight going from Toronto to London, or going from New York to London. If they demand the same specific service, we feel we should make the same charge; otherwise we would be imposing a charge on those airlines serving Canada which we were not imposing on airlines not serving Canada.

Senator THORVALDSON: Is it standard practice internationally to have similar legislation?

Mr. BALDWIN: There is a wide variety of service charges in existence all over the world, and they are related either to the facility concept that I have described as applicable to paragraph (b) or the type of thing we are now talking about. We feel we should have the right to impose reasonable user charges where there is clear evidence of specific use of a facility provided by the Canadian Government or the Canadian taxpayer in a non-discriminatory fashion, without making any distinction between airlines using it.

We would not act in a manner that was inconsistent with anything that might be decided by the International Civil Aviation Organization. It is our basic policy to act in accordance with the general position taken by that organization. We do not contemplate at the present time any new type of user charges applicable in the North Atlantic within the context of this new legislation. However, one cannot give any commitment as to the position at some date in the future. All I can say for the moment is that there is no new action contemplated, and if we should by any chance find something that we are doing which is inconsistent with the broad international position taken by the international organization, I feel sure we would try to reconcile the position, because this has been our basic policy in regard to that organization since its inception.

That I think answers the first part of the point raised by Mr. Corlett. Now, I am not an expert on tax law, and perhaps Mr. Fortier could comment on that.

The CHAIRMAN: Mr. Corlett, that appears to answer your three questions. Are you satisfied with your answers?



Mr. CORLETT: Yes, Mr. Chairman, I feel that Mr. Baldwin has satisfactorily answered the first three questions. There was a fourth question relating to what the Honourable Mr. Turner said in the house that the Government had given assurances concerning any new types of charges to be imposed in the future. I presume there would be consultation with the airlines?

Mr. BALDWIN: That has been our standard practice in this matter; and again, we assured the International Air Transport Association in writing that we intended to continue this practice when the clause was under discussion.

Senator THORVALDSON: In other words, Mr. Baldwin, you must be in communication with those countries, and there must be some kind of a contractual relationship established as a result of this section. Would that be accurate?

Mr. BALDWIN: Yes, but since this clause has been under discussion for quite some time we have given a written commitment, which is in accordance with the procedure we follow anyway, to the Secretary General of the International Air Transport Association that any new regulations considering new types of charges that will be breaking new ground under this legislation will be a matter of discussion with them before any recommendation is made to the Government.

Senator LANG: Mr. Baldwin, I assume these principles do not apply to marine aids. Does shipping pay user charges on calls?

Mr. BALDWIN: In certain circumstances, yes. There is a more complicated situation which applies to marine communications, but there are circumstances in which the marine user turning to the use of Department of Transport marine communications facilities for specific purposes, pays a fee.

Senator RATTENBURY: For aids to navigation?

Mr. BALDWIN: No, this applies to the forwarding of messages.

Senator LANG: Are we concerned with aids to navigation in connection with the word "facility"?

Mr. BALDWIN: We may in the long run, but this might be more appropriate under clause (b) than under clause (a).

The ACTING CHAIRMAN: Would you like Mr. Fortier to deal with the tax aspects?

Mr. BALDWIN: Yes, I would prefer that, sir.

Mr. Jacques Fortier, Director of Legal Services, Department of Transport: Mr. Chairman and honourable senators, the second point that was raised by Mr. Corlett in his brief refers to the question as to whether these charges constitute a tax. He states in his memorandum:

Undoubtedly, it will have to be admitted that such a user charge will represent a form of a tax imposed against the owner of the said aircraft.

I would submit, Mr. Chairman, that it is irrelevant whether these charges contemplated under section 3A constitute a tax. The section authorizes the Governor-in-Council to provide services and facilities, and to make charges, and the question of whether it is a tax is of absolutely no importance.

It is admitted that Parliament has full authority to provide as is contemplated in section 3A, and Mr. Corlett says so in his memorandum where he says:

It is recognized that such delegation is within the powers of Parliament...

In this connection I should like to point out that in the Financial Administration Act, section 18 authorizes the Governor-in-Council to impose charges for the

provision of such services. This section in the bill before us has the general purpose as section 18 of the Financial Administration Act.

In addition, Mr. Chairman, I might point out that if we were to follow the suggestion of Mr. Corlett, it would mean that every time we wished to impose a charge for these services or facilities we would have to go to Parliament. The charges that are contemplated are very numerous, and from time to time we may have to reduce them. As a matter of fact, the charges which now exist have to be amended from time to time, and if we were to follow Mr. Corlett's suggestion it would mean that every time a revision or an amendment was required we would have to go to Parliament, and this would create an impossible situation.

Senator HAIG: In connection with what Mr. Baldwin said, you charge each airline a certain percentage in accordance with space qualifications in regard to ticketing, freight charges, and so on in air terminals. Is that based on an average fee, or is it just whatever the traffic will bear in the air terminal?

Mr. BALDWIN: I am not quite sure to which particular charge you are referring. We have, as you said, a huge schedule of charges. Our revenues from airport operations generally are in the neighborhood of \$25 million a year, and we are coming very close to meeting our operating costs. At airports one of the charges is the landing fee, and this relates to the size of the aircraft and the nature of the flight.

We charge also a rent for space in airport buildings. This, again, depends upon the value of the space, some of our floor space being more valuable than other space.

We have a common user charge which is related to the number of times an aircraft comes to the building. This may be the type of thing you are thinking of. This is intended to recover the costs of certain common user space which cannot be identified as related to the use of one particular airline. They all use it generally. Therefore, we impose a fee on them related to the number of times they pull an aircraft up to the building. It is on a percentage basis related to the recovery of the costs.

Senator HAIG: What is the reason for charging ten cents to go onto the observation platform at an air terminal?

Mr. BALDWIN: I think this is worth over \$50,000 a year to the general income. It is one of the established ways of raising money that we have employed. The revenue is surprisingly large, and we have not had much objection to it, although we have had some.

Senator RATTENBURY: I think it is more or less a form of nuisance.

Senator HAIG: For \$50,000 a year it is a darned good nuisance.

Senator McDONALD: Mr. Baldwin, you mentioned that the revenues were about \$25 million.

Mr. BALDWIN: They are close to that figure. I do not have up-to-date figures with me, but for the fiscal year 1965 they were \$22.5 million, and they have been going up steadily.

Senator McDONALD: And this is close to your capital costs?

Mr. BALDWIN: The operating costs. That does not include depreciation, mind you.

Senator McDONALD: You have no revenues to offset the capital costs?

Mr. BALDWIN: We do keep an accounting for each airport on a full accrual basis. I do not have it with me at the moment. The initial target we set for ourselves was to try to cover operating costs. It has been a long uphill fight, but we are getting there.

The ACTING CHAIRMAN: On the accrual basis I assume it is entirely in red ink?

Mr. BALDWIN: Yes, although one or two of the larger airports are covering their depreciation now, but not the interest on the depreciation.

Senator RATTENBURY: Do these charges stand even though the Department of Transport does not operate the air terminal? I am thinking of the case of municipally-owned terminals.

Mr. BALDWIN: Yes, but not by complusion on our part, but because it is the custom of municipally-owned airports to follow our scale.

Senator RATTENBURY: You would not allow them to get too far out of line?

Mr. BALDWIN: I think the answer is that as yet they have never shown any indication of doing so. Usually they have used our charges as the norm.

The ACTING CHAIRMAN: Mr. Corlett, with regard to Mr. Fortier's explanation, would you agree that in view of the undertaking that has been given by the department with respect to the imposition of new fees, that perhaps his point is well taken? That is, with respect to your allegation that it is a tax?

Mr. CORLETT: I did not hear your last sentence, senator.

The ACTING CHAIRMAN: In view of the undertaking given by the department that no new type of charge is to be made, and that these charges will be consistent with those of any ICAO solution that is subsequently reached, would you agree that his view that the question of whether this is a tax or a charge is irrelevant at this point?

Mr. CORLETT: I would certainly agree that our first question was by far the more important, but since we were committed to make a presentation we felt that we should also give our observations on this other point. If we had a choice we would take the solution to the first problem as against one to the second.

The ACTING CHAIRMAN: Thank you. On behalf of the committee I thank you for having come here this morning and giving us your views.

Are there any other questions with respect to clause 1? Shall clause 1 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We come now to clause 2. This, as Mr. Baldwin said, is a mixture of a variety of principles, the first one being the hours of work. I wonder if you would care to go over this, Mr. Baldwin?

Mr. BALDWIN: Mr. Fleming, the Superintendent of Air Regulations is present, and he will deal with this.

**Mr. M. M. Fleming, Superintendent, Air Regulations Branch, Department of Transport:** Mr. Chairman and honourable senators, subparagraph (k) reads:

the maximum hours of work and other working conditions for pilots, co-pilots, navigators, and flight engineers—

As Mr. Baldwin indicated earlier I think this is merely a transfer of the powers of Part II of the act to get Part I, and it is intended to be used only in ensuring the safety of flight. In other words, the social conditions of the employment of air crew are not intended to be considered in administering this proposed clause. It is only to control the hours of work as they affect the fatigue of flight crews. It has been our experience—and not enough is yet known about this, perhaps—that about 120 hours of flying per month is the maximum that should be contemplated as consistent with an alert and safe pilot.

Senator HAIG: May I interrupt you for a moment? Have not these airline pilots and air crew members union agreements with the airlines?



Mr. FLEMING: Some of them have, but some of them have not. The major Class 1 airlines do have, almost invariably, agreements with the pilots in which the hours vary from 85 to 100 per month, depending upon whether it is a domestic or intercity or long-haul operation. There are many operators of aircraft on many airlines who do not enjoy the benefit of such agreements.

Senator HAIG: Would this clause allow you to protect the ground crew and people in the tower, and so on?

Mr. FLEMING: No, sir; flight crew only. We say:

—pilots, co-pilots, navigators and flight engineers employed by any person operating a commercial air service—

These are all flight deck personnel.

Senator LANG: From a practical point of view, how is it enforced where another country might take a different stance?

Mr. FLEMING: This would be imposed on Canadian carriers, though we would expect international carriers who are certificated in Canada for the exercise of traffic rights into Canadian ports either to comply with the rules set up under this clause or else an equivalent clause set up by the state of registry. In other words, if we found a foreign airline operating crews at 160 hours a month and they were licensed by the Air Transport Board and certificated by the department for the purpose of carrying Canadian traffic, we would certainly intercede.

Senator THORVALDSON: This subject of the hours of pilots and people like that, is it one which is discussed at meetings of the international organization?

Mr. FLEMING: Yes, senators. However, to date the problem has been so complex, there are so many situations which must be controlled, that the International Civil Aviation Organization have not come up with standards of their own, though they have indicated an intention to do so.

At the moment we have what amounts to recommended practices for airlines, which we include in the operations manual or insist be included in the operations manual of the carrier, which contains their own instructions to their own personnel. But this would be very hard to enforce.

Senator THORVALDSON: The government of the United States, or whatever legislative authority has similar jurisdiction to your department, do they deal with this question of hours?

Mr. FLEMING: Yes, at the last count I think there were 14 countries which had legislation of this kind, not necessarily in these precise terms.

Senator FOURNIER (*Madawaska-Restigouche*): Do the companies operating charter flights come under these regulations?

Mr. FLEMING: Yes, sir.

The ACTING CHAIRMAN: Are there any other questions? Do you wish any discussion on paragraph (1)?

Senator McDONALD: There is one question I would like to ask about the 120 hours a month. Are there any restrictions as to how much flight time a flight crew can put in in 24 hours?

Mr. FLEMING: Yes, I used 120 hours as being an indication of what we consider to be the point beyond which it is perhaps unwise to go. There is a daily, weekly, monthly, quarterly and yearly maximum.

Senator THORVALDSON: With regard to paragraph (1), what type of investigations and reasons for them are contemplated under this paragraph? For instance, if the Douglas Aircraft Company has a factory in Canada, it would be subject to inspection by your department?

Mr. FLEMING: Basically, this would be to provide for the examination of their quality control system and the inspection system that is being provided. I think these are the two main things we are looking at.

The ACTING CHAIRMAN: Surely, the department goes into aircraft factories today and carries out these inspections? Is there no authority for this at the moment?

Mr. FLEMING: I am afraid not. However, there is a sort of "backdoor" authority, in that we ultimately issue a type certificate for the aircraft, and we can reserve the right not to issue this if we are not satisfied.

The ACTING CHAIRMAN: Paragraph (m)?

Senator HAIG: In connection with aircraft accidents, the investigation is made by D.O.T. and the airline?

Mr. FLEMING: Customarily, the major airlines invariably conduct their own investigation. They are not required to do so.

Senator HAIG: But, as a matter of practice, they do, do they not?

Mr. FLEMING: Yes, they do, but their investigation is independent of our own, although the two crews might work very closely together.

The ACTING CHAIRMAN: Paragraph (m)? Paragraph (n)? Paragraph (o)? These are all safety matters. In the absence of any further questions, shall clause 2 carry?

Hon. SENATORS: Carried.

Senator HAIG: When has there been any case of obstruction or hindrance of an investigation?

Mr. BALDWIN: There is a great tendency on the part of the public, unwittingly perhaps, to pilfer.

Senator HAIG: To steal?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: In some instances you might be free to describe it as looting.

Mr. BALDWIN: Yes. This is in a major accident where some member of the public might reach it before you have adequate security staff on the ground.

Senator THORVALDSON: With regard to a situation where a bad accident occurs, is it the department or the airline that takes the major share of the investigation?

Mr. BALDWIN: We consider the prime responsibility rests with the department.

The ACTING CHAIRMAN: Clause 3?

Mr. BALDWIN: This is all part of the same pattern of giving necessary powers to establish boards of inquiry for the purposes of accident investigation.

The ACTING CHAIRMAN: The practice of establishing boards exists presently. Is it not with regard to the payment of fees, and so on, that this has to do?

Mr. BALDWIN: No, I think we are broadening the whole basis.

Mr. FORTIER: The reason we are putting it in the act, although it is already in the regulations, is that we are under the advice of the officers of the Department of Justice that, in order to compel witnesses to attend and in order to be able to take depositions under oath, it is preferable to have something in the act rather than just in the regulations.

The ACTING CHAIRMAN: Is that satisfactory?

Hon. SENATORS: That is satisfactory.

The ACTING CHAIRMAN: Shall clause 3 carry?



Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 4. The first amendment deals with increasing the size of the Air Transport Board from three to not more than five members.

Senator THORVALDSON: Who are the present members of the Air Transport Board?

Mr. FORTIER: The Chairman, Mr. Gerard Morisset; the vice chairman, Mr. John Belcher, and a third member, Mr. Russell Boucher.

Senator HAIG: You have mentioned an increase in the work of the board. Is there any reason for it, other than an increase in air traffic?

Mr. FORTIER: Commercial traffic, and I think you can say the same for non-commercial traffic, is doubling in volume every four or five years. This represents a fantastic rate of growth.

The ACTING CHAIRMAN: Shall clause 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 5. Shall clause 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 6. What is the change here, Mr. Baldwin?

Mr. BALDWIN: One is a minor change in the clarification of the board's powers. They have been exercising powers along these lines generally since 1951. The balance of the change relates to a change in the appeal procedure I described at the outset.

Senator HAIG: As I read clause 4a, an applicant or an intervener who receives or does not receive a licence from the board can go to the minister and the minister makes the decision:

—the minister shall thereupon certify his opinion to the board and the board shall comply therewith.

What is the use of having an appeal from the Transport Board?

Mr. BALDWIN: The appeal is from decisions of the board to the minister.

Senator HAIG: And what does the minister decide?

Mr. BALDWIN: He may overrule the board. This has been the practice heretofore, though the number of cases where the minister has varied a board decision would be extremely minute, a fraction of one per cent.

Senator THORVALDSON: I was going to suggest that I do not imagine a power of this kind is used very frequently.

Mr. BALDWIN: That is correct.

The ACTING CHAIRMAN: Are there any other questions on clause 6? Shall clause 6 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall we report the bill back?

Hon. SENATORS: Carried.

The committee adjourned.

## APPENDIX

Brief presented by Mr. Murray E. Corlett, Q.C.

RE: BILL C-153—An Act to Amend the Aeronautics Act

We are acting for five international airlines who have a vital interest in Section 1 of this Bill. The purpose of this Section 1 is to add a new Section 3A to the Aeronautics Act.

The international airlines in question are:

- (1) Pan American World Airways
- (2) Trans World Airlines Inc. (TWA)
- (3) KLM—Royal Dutch Airlines
- (4) Scandinavian Airlines System (SAS)
- (5) Irish International Air Lines

Bill C-153 is a government bill which has already been passed in the House of Commons. The proposed Section 3A referred to in Section 1 of this Bill as amended and passed by the House of Commons reads as follows:

“3A. The Governor in Council may make regulations

- (a) prescribing charges for the use of
  - (i) any facility or service provided by or on behalf of the Minister for or in respect of any aircraft, and
  - (ii) any facility or service not coming within subparagraph (i) provided by or on behalf of the Minister at any airport, and
- (b) imposing upon the owners or operators of aircraft, wherever resident, in respect of flights within Canada, charges for the availability during such flights of any facility or service provided by or on behalf of the Minister, and every charge so imposed constitutes a legal obligation enforceable by Her Majesty by action in the Exchequer Court of Canada.”

It will be noted that proposed Section 3A has been divided into paragraphs (a) and (b). Paragraph (a) in turn has been broken down into subparagraphs (i) and (ii). The purpose of this new Section is to empower the government to levy charges against airline operators arising from the use of facilities maintained by the Department of Transport under paragraph (a) and arising from the availability of services maintained by the same Department under paragraph (b).

It will be remembered that the government introduced a somewhat similar bill (C-117) in the House of Commons on December 3rd, 1963 but due to opposition raised, it was never proceeded with beyond the House of Commons.

With reference to that part of proposed Section 3A contained in the current bill relating to the imposition of charges based upon the criterion of availability of services (paragraph (b)), it is satisfying to note, after comparing it with its counterpart in the 1963 bill, that such charges are now restricted to flights within Canada. No longer is it intended to impose an availability charge against foreign aircraft when operating outside of the territorial jurisdiction of Canada. Also, the right to resort to the use of the arbitrary writ of extent has been dropped from the wording used in paragraph (b). These were objections raised by our clients in 1963. Since they have now been removed from the wording used in paragraph (b) of proposed Section 3A, our clients have no further objections to raise concerning these points insofar as paragraph (b) is concerned.

Turning now to paragraph (a) of proposed Section 3A, its purpose is to empower the government to prescribe charges against airline operators for services rendered by the Department of Transport to aircraft which request the information or service provided. This type of charge would be based upon contract since the aircraft has requested the information or service. Similarly, in the same paragraph (a), charges will be imposed for use of airports by any aircraft, which airports are those maintained by the Department of Transport. Here again, the charge is based upon the law of contract. Therefore, subject to one reservation, no objection can be taken to the general intent expressed in paragraph (a) of proposed Section 3A. The charges levied under paragraph (a) will apply to both Canadian and foreign aircraft.

However, our reservation relating to the form of wording used in paragraph (a) arises from the fact that, as presently worded, the paragraph could be interpreted as permitting the imposition of charges for use of facilities by aircraft while outside of the territorial jurisdiction of Canada. It admitted that some method of providing for payment of facilities offered by national governments and enjoyed by aircraft while passing over the high seas will have to be established but this is presently a world-wide problem which more logically comes under the jurisdiction of the International Civil Aviation Organization (ICAO) of which Canada is an important member.

It is submitted that it would not be in the interest of Canada as a member of this international community if Canada were to impose user charges at this time against aircraft while operating beyond Canadian territory in a manner which might be inconsistent with an ICAO solution to this problem.

It is a fact that ICAO has not dealt with this specific issue since the time of the 1958 En Route Charges Conference when certain very broad principles were established. Because of a number of factors, including the economic health of airlines, the continued growth of airline traffic and the increased expenses incurred by national governments relating to the installation of facilities and services for international aviation, the 1965 ICAO Assembly authorized the convening of an ICAO Charges Conference. This proposed conference has been budgeted for in the calendar year 1966, although present indications are that it will not likely be convened until some time early in 1967.

Canada, along with a number of other governments, has been anxious to have this proposed charges conference convened as early as possible since it is hoped that, following its deliberations and decisions, agreement on principles and even details will have been reached. This would then enable Canada and other interested countries to institute a system of user charges covering international flights over the high seas which will be consistent with international principles established by ICAO.

It is understood that this view was expressed by the Canadian representative at the recently held ICAO Council meeting on this subject on January 17, 1966.

Since the ICAO Charges Conference will be held early in 1967 and in order to assist in the formulation of acceptable international principles relating to the imposition of user charges while aircraft are over the high seas, it is submitted that subparagraph (i) of paragraph (a) of proposed Section 3A be qualified so that it will read:

any facility or service provided *in respect of flights within Canada*,  
by or on behalf of the Minister for or in respect of any aircraft, and—

Proposed Section 3A as it appears in Bill C-153 states that the Governor in Council can, if it so desires, make regulations imposing a user charge upon the



owners of foreign aircraft. Undoubtedly, it will have to be admitted that such a user charge will represent a form of a tax imposed against the owner of the said aircraft. As Section 3A has been drafted, Parliament has delegated the right to impose a specific tax of this kind to the Governor in Council. It is recognized that such delegation is within the powers of Parliament but at the same time, it is submitted that much a method is contrary to good Parliamentary practice. A good example of Parliament's attitude towards this type of tax in recent years can be demonstrated by looking at the case of the export duty on electricity which was imposed until the 1963 Federal budget, when it was finally repealed. For many years, the authority to levy an export duty on electricity was established under the Electricity and Fluid Exportation Act, and later the Exportation of Power and Fluids and Importation of Gas Act. Under both of these statutes, it was enacted that the Governor in Council could make regulations imposing export duties not exceeding \$10 per horse power per annum upon power exported from Canada. At this point, it will be observed that in each of these two power statutes the delegation from Parliament to the Executive of the right to impose a tax was granted but with the notable exception that in these power statutes a maximum tax was established by Parliament. In Section 3A of Bill C-153 there is not even a maximum rate established in the bill itself. Then, as recently as 1959, the government of the day decided as a matter of policy that the discretionary authority heretofore given to the executive government to establish an export duty on power within a statutory maximum should be removed and the entire right restored to Parliament. This was achieved by placing this power tax in the Excise Tax Act (Section 8) where the exact rate of tax was spelt out in full. When dealing with this change in the law, the then Minister of Finance said:

The feature of that existing law (Exportation of Power and Fluids the Importation of Gas Act) which I must say I could not approve, is that it gives power to the Governor in Council subject to a ceiling to establish the rate of the tax...What we are doing is to make that a statutory tax and to remove any power to establish the tax by Order-in-Council... There is no change in the rate of tax.

*Hansard House of Commons, May 19, 1959, Pg. 3820)*

On the same point Senator Ross Macdonald said in the Senate:

Should we approve of taxation by order in council or should we insist that taxation measures be approved or disapproved by Parliament? That, in my opinion, is the whole issue here.

*(Senate Hansard June 17, 1959, Pg. 839)*

A user charge as provided for in Section 3A will clearly have a bearing on the revenue of the Federal government and therefore would be a taxation provision. This being so, it is submitted that better Parliamentary practice requires that the imposition of such a tax should be established by Parliament and not by order-in-council of the executive government.

Finally, it is submitted that such a user charge represents a form of tax within the accepted principles of taxation. Recently, in December 1965, the Canadian Tax Foundation published an authoritative study entitled "Occupancy of Tax Fields in Canada". This study is significant since it was prepared at the request of the Tax Structure Committee of the federal and provincial governments for their use. At page 2 of this study, a comprehensive and simple definition is given of what constitutes a tax. It states:

In this study *any form of compulsory payment levied by government was accepted as a tax*, whether it was in the form of a premium, licence



fee or other impost. This broad (and loose) definition of a tax is, of course, open to debate. However, *the element of compulsion* seems to provide as useful a rule of thumb as any as to what is a tax and it permits a more complete listing of revenue.

It is our view that the user charge referred to in Section 3A of Bill C-153 falls clearly within this definition.

GORDON F. MACLAREN, Q.C.  
MURRAY E. CORLETT, Q.C.

OTTAWA, Ontario.  
April 27th, 1966.





First Session—Twenty-seventh Parliament  
1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE**  
**ON**  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable A. K. HUGESSEN, *Chairman*

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No. 5

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*Complete Proceedings on the Bills*

S-32, "An Act respecting Canadian Pacific Railway Company".  
(Burstall Subdivision, Sask.)

S-34, "An Act respecting Canadian Pacific Railway Company".  
(Red Deer Subdivision, Alberta)

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THURSDAY, JUNE 2, 1966

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WITNESSES:

Mr. Gregory J. Gorman, Counsel and Parliamentary Agent.  
Mr. J. M. Roberts, Vice-President, Traffic, C.P.R.  
Mr. J. C. Mills, General Manager, Saskatchewan Minerals. Sodium Sulphate Division.  
Mr. D. L. Bohannen, Vice-President, Canadian Superior Oil Ltd.  
Mr. C. A. Colpitts, Chief Engineer, C.P.R.  
Mr. J. Cherrington, Assistant Regional Engineer, C.P.R.  
Mr. J. R. W. Sykes, Assistant General Manager. Marathon Realty Ltd.  
Mr. W. J. Bagnall, Reeve, County of Mountain View #17, Didsbury, Alberta.

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REPORTS OF THE COMMITTEE  
APPENDICES A, B and C.

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Adrian K. Hugessen, *Chairman*  
The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*).  
(Quorum 9)



## ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Wednesday, May 11, 1966:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator Davey, that the Bill S-32, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Davey, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

"Pursuant to the Order of the Day, the Honourable Senator Prowse moved, seconded by the Honourable Senator McDonald, that the Bill S-34, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Prowse moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, June 2, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-32, intituled: "An Act respecting Canadian Pacific Railway Company", has in obedience to the order of reference of May 11, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## REPORT OF THE COMMITTEE

THURSDAY June 2, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-32, intituled: "An Act respecting Canadian Pacific Railway Company", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## REPORT OF THE COMMITTEE

THURSDAY, June 2, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-34, intituled: "An Act respecting Canadian Pacific Railway Company", has in obedience to the order of reference of May 11, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## REPORT OF THE COMMITTEE

THURSDAY, June 2, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-34, intituled: "An Act respecting Canadian Pacific Railway Company", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## MINUTES OF PROCEEDINGS

THURSDAY, June 2, 1966.

Pursuant to adjournment notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aird, Aseltine, Baird, Beaubien (*Provencher*), Bourget, Brooks, Connolly (*Halifax North*), Connolly (*Ottawa West*), Croll, Fournier (*Mad.-Rest.*), Gélinas, Gershaw, Haig, Hays, Hollett, Isnor, Kinley, Lefrançois, McCutcheon, McDonald, Methot, Pearson, Power, Quart, Rattenbury, Smith (*Queens-Shelburne*), Willis.—(27)

*In attendance:* Mr. E. Russel Hopkins, Senate Law Clerk and Parliamentary Counsel.

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Bill S-32, "An Act respecting Canadian Pacific Railway Company", was read and considered.

On motion of the Hon. Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

Mr. Gregory J. Gorman, counsel.

Mr. J. M. Roberts, Vice-President, Traffic, CPR.

Mr. J. C. Mills, General Manager, Saskatchewan Minerals, Sodium Sulphate Division.

A plan of the approximate location of Ingebright Lake Branch, submitted by Mr. Gorman, was ordered to be printed as Appendix A to these proceedings.

On motion of the Hon. Senator McCutcheon it was resolved to report the Bill without any amendment.

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Bill S-34, "An Act respecting Canadian Pacific Railway Company", was read and considered clause by clause.

On motion of the Hon. Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

Mr. Gregory J. Gorman, counsel.

Mr. J. M. Roberts, Vice-President, Traffic, CPR.

Mr. D. L. Bohannen, Vice-President, Canadian Superior Oil, Ltd.

Mr. C. A. Colpitts, Chief Engineer, CPR.

Mr. J. Cherrington, Assistant Regional Engineer, CPR.

Mr. J. R. W. Sykes, Assistant General Manager, Marathon Realty Ltd.

Mr. W. J. Bagnall, Reeve, County of Mountain View No. 17, Didsbury, Alberta.

A plan of the approximate location of Didsbury Westerly Branch, submitted by Mr. Gorman, was ordered to be printed as Appendix B to these proceedings.

Two letters referred to in the brief submitted by Mr. Bagnall were ordered to be printed as Appendix C to these proceedings.

Eighty letters, submitted by Mr. Bagnall, were ordered to be tabled.

On motion of the Hon. Senator Croll, it was resolved to report the Bill without any amendment.

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At 11.40 a.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds, Assistant  
Chief Clerk of Committees.



**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Thursday, June 2, 1966.

The Standing Committee on Transport and Communications, to which was referred Bill S-32, respecting Canadian Pacific Railway Company, and Bill S-34, respecting Canadian Pacific Railway Company, met this day at 10.15 a.m. to give consideration to the bills.

Senator A. K. Hugessen in the Chair.

The CHAIRMAN: Honourable senators, as both of the bills before us are for the construction of new lines I suggest there should be a *Hansard* report of our proceedings.

Hon. SENATORS: Agreed.

The CHAIRMAN: May I have the usual motion with respect to printing.

The committee agreed that a verbatim report be made of the committee's proceedings on the bills.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bills.

The CHAIRMAN: Bill S-32 is an act respecting Canadian Pacific Railway Company, and its proponents are present. They are Mr. Gregory J. Gorman who is the parliamentary agent, and the witnesses who are with him are Mr. J. M. Roberts, Vice-President, Traffic, Canadian Pacific Railway Company; Mr. J. C. Mills, Saskatchewan Minerals, Sodium Sulphate Division; Mr. C. A. Colpitts, Chief Engineer, Canadian Pacific Railway Company; Mr. J. R. W. Sykes, Assistant General Manager, Marathon Realty Limited; Mr. J. E. Paradis, who has appeared before us before and who is the Senior Solicitor, Canadian Pacific Railway Company; and Mr. R. J. Madge, Solicitor, Canadian Pacific Railway Company.

This bill stands in the name of Senator A. Hamilton McDonald. Have you anything you wish to add before we proceed, Senator McDonald?

Senator McDONALD: No, Mr. Chairman. As you have indicated, the officials are present, and if the committee has any questions then I think they should be asked of the officials rather than myself. I have nothing to add.

The CHAIRMAN: Which of the proponents wishes to speak to the bill? I have a report from our legal counsel that the bill is in proper legal form and that he has no suggestions.

Gregory J. Gorman, Parliamentary Agent and Counsel: Mr. Chairman and honourable senators, the purpose of this bill is to authorize the construction of an 11 mile branch line of the Canadian Pacific to serve the plant of Saskatchewan Minerals Corporation. The branch line will be located on the Canadian Pacific's Burstall subdivision in the Province of Saskatchewan.

Your Chairman has given you the list of appearances, and I think it would be most useful if, first of all, Mr. J. M. Roberts, Vice-President of Traffic of

Canadian Pacific Railway Company, were to explain the general purposes of the line of railway.

**J. M. Roberts, Vice-President, Traffic, Canadian Pacific Railway Company:** Mr. Chairman and honourable senators, I am Vice-President of Traffic of the Canadian Pacific Railway Company, and I am in my 44th year with the traffic department.

The Canadian Pacific Railway has been associated with Saskatchewan Minerals, Sodium Sulphate Division, since they commenced operations in Chaplin in 1948, and we have also taken care of the transportation requirements from Bishopric, which has operated since October 1958.

The Canadian production of sodium sulphate is marketed to the extent of about two-thirds in Canada and one-third in the United States. Saskatchewan Minerals Corporation supplies approximately 40 per cent of the Canadian market.

In anticipation of the growing demand brought on by the expansion of the wood pulp industry, Saskatchewan Minerals asked that we consider construction of a branch line to provide the necessary rail service, and we have undertaken to do so, to their new plant, which is at Lake Ingebright.

This is the reason, honourable senators, that we are before you in connection with this bill covering the construction of the line which we have undertaken to construct, providing of course the necessary authority is received from Parliament.

That is all I have to say, Mr. Chairman, except that to the best of my ability I shall be pleased to answer any questions anyone may wish to ask in connection with traffic matters.

The CHAIRMAN: Mr. Roberts, as an easterner, may I ask where is Saskatchewan Fox Valley situated?

Mr. ROBERTS: It is almost at the Saskatchewan-Alberta border. It is on a private line that starts in Saskatchewan, runs through Alberta and ends at a place in Saskatchewan called Fox Valley.

The CHAIRMAN: I hope honourable senators have had an opportunity to see the map which is before them. One reason I asked the question was that I was anxious to know whether it is entirely CPR territory, or whether the CNR runs through there, or whether there is any objection by the C.N.R.

Mr. ROBERTS: Well, it is in what one might call the "football" area on the map. It is formed by our railway line which breaks off at Java and runs through to Bassano, and in the south, Java again through Medicine Hat, also to Bassano. It is right in the centre, sir.

Senator BURCHILL: I believe you mentioned the wood pulp and paper industry, Mr. Roberts?

Mr. ROBERTS: Yes, senator.

Senator BURCHILL: To which particular mill do they propose to ship?

Mr. ROBERTS: There is the extension in British Columbia and Prince George.

Senator BURCHILL: I am thinking of the middle west.

Mr. ROBERTS: Most of our production, and increased production we are glad to say, is in Canada.

Senator BURCHILL: Will it be shipped to the coast?

Mr. ROBERTS: To the coast and to Eastern Canada, which they do now.

Mr. GORMAN: Mr. J. C. Mills, General Manager of Saskatchewan Minerals, Sodium Sulphate Division, is here and could provide details of the exact nature of the product it markets, and other details of that nature.

The CHAIRMAN: Unless there are further questions of Mr. Roberts, shall I call on Mr. Mills? Thank you, Mr. Roberts.

**Mr. John C. Mills, General Manager, Saskatchewan Minerals Corporation, Sodium Sulphate Division:** Mr. Chairman and honourable senators, Saskatchewan Minerals is a Crown Corporation operating sodium sulphate plants at Bishopric and Chaplin, Saskatchewan. Sodium sulphate produced in Saskatchewan is sold primarily to the Kraft pulp industry in Canada and the United States, and in smaller quantities to the glass and mineral feed industries. Sodium sulphate is a relatively cheap commodity selling for slightly over  $\frac{3}{4}$  cents per pound.

Saskatchewan producers do not yet produce a product of sufficient purity that can find use in the synthetic detergent industry, but Saskatchewan Minerals plans to have such a product available sometime later this year.

During 1964-65 Saskatchewan Minerals produced between 45 per cent and 50 per cent of all sodium sulphate produced in Canada. Our company exports between 35 per cent and 50 per cent of our production to the United States and in 1965 we exported 65 per cent of the total imports of sodium sulphate.

With the tremendous expansion in the Kraft pulp industry the demand for sodium sulphate in Canada is expected to increase by 200,000 tons over the next five years and our new installation near Fox Valley is being built to assure that adequate supplies are available to meet this demand.

The demand for sodium sulphate will also increase in the United States, and it is our intention to continue to improve our sales to that country. We are also endeavouring to develop offshore markets in New Zealand, Australia and Japan.

Since late 1963 we have been overselling our annual harvest of raw material from our lakes at Bishopric and Chaplin, and reserves stockpiled in previous years have been used. Without the new installation we would be forced to cut back on sales within the next 12 months.

The plant to be built at Ingerbright Lake near Fox Valley will cost approximately \$1.7 million and will have a productive capacity of 150,000 tons per year. The deposit contains in excess of nine million tons of sodium sulphate. Initially we must employ 24 to 30 people and the community will benefit from an annual payroll of approximately \$180,000. In addition to this contractors will be used in the winter months to harvest and stockpile our raw materials.

This operation will cover a period of two months each winter and utilize the services of 15 to 20 men. As production increases it will be necessary to employ additional people.

The municipality will of course benefit from this project by way of grants in lieu of taxes from our company and the village of Fox Valley will benefit by way of taxes on employees' housing. The village will also benefit later on as the Valley and the residents of the village will have natural gas available for their use.

I would like to say that we have had excellent co-operation from the people in the district and also from both the village and municipal councils in planning and proceeding with our project.

Due to our geographical location the nature of our product and the fact that our markets are from 1,000 to 2,500 miles distant the most economical way of transportation is by railroad and hence our request to the C.P.R. for a rail line to link up with the existing line at Fox Valley.

We plan to have storage capacity of 11,500 tons for finished product and cars will be loaded daily and scheduled according to customers' requirements.

Without this line we would be forced to truck our material to Fox Valley and the added cost could endanger our competition position in future markets.

We are satisfied with the arrangements made between our company and the CPR, and are fully in support of this application to Parliament for construction of the proposed branch line.



Senator CROLL: What does this mean? Can you relate it to dollars, both production and export?

Mr. MILLS: Our annual statement is public knowledge, senator. Our sales last year amounted to over \$2.5 million.

Senator CROLL: And exports?

Mr. MILLS: Exports last year amounted to over \$1,100,000. This is our business. There are additional sales made to the United States by other companies.

Senator CROLL: What do you mean by other companies; do you mean companies related to you?

Mr. MILLS: No.

The CHAIRMAN: Are there any questions? Perhaps I should at this point advise the committee of a letter I received from the counsel to the Department of Transport, Mr. Fortier, whom you know. This refers both to this Bill S-32 and to the bill we have to consider next, S-34. It is addressed to Mr. Batt, Chief Clerk of Committees, and reads:

I refer to private Bills S-32 and S-34, being acts respecting Canadian Pacific Railway Company, for the purpose of authorizing this company to construct an 11-mile branch line in the vicinity of Fox Valley in the Province of Saskatchewan and a 16-mile branch line in the vicinity of Didsbury, Alberta.

The provisions of these bills have been reviewed by the Minister of Transport, who has advised that there are no objections to the bills.

It would be appreciated if you would so inform the Senate Committee on Transport and Communications when Bills S-32 S-34 for being reviewed by the committee.

Yours truly,

Jacques Fortier.

Honourable senators, do you wish any further evidence with respect to Bill S-32?

Senator McCutcheon: I propose that the bill be reported.

Senator CROLL: I second.

The CHAIRMAN: It has been moved and seconded that this bill be reported. I suggest to you that I put the clauses in the normal way. Clause 1, line of railway authorized. Shall clause 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Clause 2, time for completion. Shall clause 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is carried. Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: It is agreed. Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Honourable senators, we have before us now Bill S-34, with respect to a line in Alberta. I have received in respect of this bill also a



favourable report of our Law Clerk, Mr. Hopkins, that in his opinion the bill is in proper legal form and that he has no suggestion to offer for its amendment.

There are some representations to be made by representatives of the area itself, in respect of this bill. I suggest that we hear the sponsors first and then call upon the representative of the district, Mr. W. J. Bagnall, Reeve of the County of Mountain View, Alberta.

Mr. GORMAN: Mr. Chairman, I think that for this bill also, Mr. Roberts would be the appropriate person to lead off.

The CHAIRMAN: Very good. Honourable senators, I have two letters from local residents about this line. Shall I read them to you now, or shall I wait until the proponents have finished?

Senator McDONALD (*Moosomin*): Would it not be proper for the railroad to make their presentation first and that we then hear the opposition?

The CHAIRMAN: That is what I thought, that we should hear the proponents first and then the opposition, and at that time I would read the two letters which have been addressed to us.

Mr. ROBERTS: Mr. Chairman and honourable senators, Canadian Pacific Railway was asked by Canadian Superior Oil Company in 1965 to construct a line of railway into their projected sulphur plant at Harmattan, Alberta, in order to provide rail transportation necessary to move the sulphur to market. The capacity of the projected plant was such that it was estimated production would amount to approximately 280,000 long tons annually.

The demand for sulphur in the world market has increased tremendously in the last three years, and it continues to grow. At the present time, markets for sulphur produced in Alberta, are offshore in countries such as Australia, Japan, India and European markets, or in the United States and Canada, in that order of importance, tonnagewise.

An example of the growth is in the export through British Columbia coast ports by Canadian Pacific Railway, which in 1962 was less than 100,000 tons, and in 1965 in excess of 500,000 tons.

We therefore informed Canadian Superior Oil Company that we were prepared to build the necessary trackage and provide the rail service essential for the marketing of their sulphur—if, of course, we are authorized by Parliament to do so.

If there are any questions involving traffic matters, I will endeavour to answer them to the best of my ability.

The CHAIRMAN: Mr. Roberts, I have two letters addressed to the committee by local residents. Apparently, their concern is that if you build this line you will abandon another branch line extending from Crossfield to Cremona, some distance farther south. Have you anything to say about that?

Mr. ROBERTS: Mr. Chairman, I would say that such matters involving abandonments do come through my department, as they are processed by Research Department, which is responsible for analysing traffic movements. Nothing has reached me so far. Before we left Montreal on Tuesday, I asked them if they were studying this Crossfield branch line and they said they were not.

The CHAIRMAN: Are there any further questions to Mr. Roberts?

Mr. GORMAN: I would suggest, Mr. Chairman, that we should now hear from Mr. Bohannen, who is vice president of Canadian Superior Oil.

Mr. D. L. Bohannen, Vice President, Canadian Superior Oil, Ltd: Mr. Chairman, Canadian Superior Oil, Ltd is building in the Harmattan area of Alberta a 42-million cubic feet per day raw gas processing plant. The designed capacity will yield some 817 long tons per day of sulphur and 15.5 million cubic

feet per day of residue pipe line gas, or on an annual basis, some 283,000 long tons of sulphur and 5.4 billion cubic feet of pipe line residue gas.

In the Harmattan areas it is estimated that there is a recoverable, proven reserve of some 8.5 million long tons of sulphur and 165 billion cubic feet of residue gas. This represents a proven 30-year supply of reserves at the present plant capacity. Drilling exploration is continuing in the immediate area and, in fact, may prove an even greater reserve.

The residue gas is contracted for sale on a long-term contract for export to the U.S.A. Canadian Superior is currently actively engaged in arranging markets for its own share of the sulphur production. With the demand for sulphur exceeding the supply, it is anticipated that 100 per cent of the sulphur will be marketed as soon as adequate transportation is arranged. Present market indications are that a major portion of the sulphur will be sold in the offshore market, that is the Far East, while the remainder will probably go into the central U.S.A. Current indications are that the plant gate price will exceed \$25 per long ton. Assuming that some 200,000 long tons per year are exported, the value would represent some \$5 million in foreign exchange.

The plant is unique in that it is one of the first being built for the purpose of extracting sulphur from natural gas as a primary product and pipe line residue gas as a secondary product.

The plant will cost some \$7.5 million plus three-quarters of a million dollars for the gas-gathering system, and \$2.5 million for the gas wells themselves. This makes a minimum expenditure of some \$10 $\frac{3}{4}$  million. When the plant goes into operation next month, some 31 people from the Didsbury area will be employed.

The plant construction is proceeding on time and is scheduled for start-up on July 1 of this year, with actual production of sulphur and residue gas by mid-July.

Canadian Superior Oil has arranged for the orderly exploitation of the raw gas by investing in the drilling of wells, construction of the plant and the necessary raw gas pipe lines, and now it is absolutely essential that a railroad be immediately completed to the plant in order that we may complete the chain from the source of supply to the ultimate market and consumer.

Thank you. I am available for questions.

SENATOR BURCHILL: Where will the chief market be?

Mr. BOHANNEN: I think it will be offshore, in the Far East.

Senator PEARSON: What are the main demands for this sulphur?

Mr. BOHANNEN: Mainly for the manufacture of fertilizers.

Senator SMITH (*Queens-Shelburne*): Will you be supplying material to the fertilizer plant in Calgary?

Mr. BOHANNEN: In that regard I can only say what I have read in the papers, but I believe a contract has already been arranged through another plant.

Senator BURCHILL: Will you supply the pulp industry in Canada?

Mr. BOHANNEN: Not from this plant, but from interests in other plants that we have.

The CHAIRMAN: Has the committee heard sufficient evidence in support of the bill? Shall we proceed to objections?

Mr. GORMAN: Since it appears from the brief handed to us by one of the opponents that there are certain questions with regard to the route chosen, I think it would be useful and helpful to the senators if they were to hear from one of the officers of the engineering branch of the railroad who can explain why that particular route was chosen, and also from the witness who has dealt with the actual acquisition of the lands for the right-of-way. I might say a

considerable part of the lands has already been acquired—at least options have been acquired. I think it would be useful to have this information at this stage. Mr. Colpitts, who is chief engineer of the railroad, is here with Mr. Cherrington. He is the engineer who did the actual work on the spot and can provide details of the route. Mr. Colpitts is here and he will be supported by Mr. Cherrington.

**Mr. C. A. Colpitts, Chief Engineer, Canadian Pacific Railway Company:** My name is C. A. Colpitts, chief engineer of Canadian Pacific. I have been with the company approximately 40 years and most of that time I have been employed in an engineering capacity.

The plant of Canadian Superior Oil, Ltd. is located in the northeast quarter of section 27, Township 31, range 4, west of the fifth meridian as shown on the plan before you. To serve the plant by railway, Canadian Pacific Railway proposes to construct a line which will connect with its railway system at Didsbury, Alberta, a point 46.9 miles north of Calgary, Alberta, on the company's Calgary-Edmonton line.

The proposed line will extend in a generally westerly direction from Didsbury for a distance of 15.3 miles.

In determining the best possible route for a line, a reconnaissance is made by experienced railway engineers and the route shown on the plan before you has been selected as the most feasible for the purpose of economical railway construction and operation and to serve in the most efficient manner possible the interests of the industry. A detailed survey to establish the exact location of the line has been made.

We have with us today Mr. James Cherrington, assistant regional engineer for the Pacific region, who has been closely connected with the location of the railway line. He is prepared to answer any questions you may wish to ask him.

I may add, honourable senators, with regard to the question of the closest railway, that the nearest is the Canadian National approximately 45 miles north of this plant.

Senator CROLL: You said the objective was to serve the interests of the industry?

Mr. COLPITTS: Yes.

Senator CROLL: What about these people who are complaining? Is it also in their interests, or is it only in the interests of the industry?

Mr. COLPITTS: No, sir, I believe when Mr. Cherrington presents his testimony you will see this question has been given thorough examination. He has made every effort to take into account all the interests involved.

Senator THORVALDSON: What is this Crossfield subdivision?

Mr. COLPITTS: It is shown on the plan.

Senator THORVALDSON: Yes, I know, but why don't you come from Sundre to Cremona?

Mr. COLPITTS: Mr. Cherrington will explain this in detail.

Senator SMITH (*Queens-Shelburne*): Did the witness not say that the nearest was 40 miles away? What about Cremona?

Mr. COLPITTS: I said the Canadian National was the nearest.

Senator PEARSON: What other use would be made of that line besides this?

Mr. COLPITTS: At this time, none, sir.

The CHAIRMAN: Are there any further inquiries of the witness? Perhaps these gentlemen will wait and hear what the opponents have to say, and then perhaps we can examine them further later.



Mr. GORMAN: Mr. Chairman, I think we might give more details at this stage with regard to why this particular choice was made. This would provide an answer to Senator Croll's question.

Mr. James Cherrington, Assistant Regional Engineer, Pacific Region, Vancouver, Canadian Pacific Railway Company: Mr. Chairman, honourable senators, I am a professional engineer employed by the Canadian Pacific Railway for the last 25 years, and am presently Assistant Regional Engineer, Pacific Region, Vancouver.

When the plant for the production of sulphur was first proposed various routes were examined from existing topographical maps, and a reconnaissance was made on the ground by engineers experienced in location surveys.

Three routes were projected. Two routes originated from the end of the Crossfield subdivision near Cremona.

The CHAIRMAN: I think all honourable senators have copies of this map and can follow what the witness is saying.

Hon. SENATORS: Yes.

Mr. CHERRINGTON: The third route originated at Didsbury. The route west from Didsbury was chosen as the most logical from all engineering factors considered, with favourable grades and curvature for railway construction and line use. The route chosen not only served the industry but in addition would give improved switching service at both the proposed plant and the existing liquefied petroleum gas loading facilities now located at Didsbury.

The railway company has revised the original location to follow quarter section lines where physically possible, and over two-thirds of the line now follows the quarter section lines to prevent undesirable severing of the land.

If the railway were to be built from the end of the Crossfield subdivision on either of the two alternatives considered, it would be necessary to upgrade this subdivision since it could not handle, in its present condition, the movement of the heavy sulphur cars due to the light rail—70 to 72-pound—and due to the ballast which was placed there in 1930 and also due to the drainage conditions. The added cost of this improvement or upgrading is estimated at about \$750,000. The proposed route west of Didsbury is in rolling prairie country rising to the west.

If there are any questions I would be pleased to answer them, Mr. Chairman.

Senator PEARSON: What height of land is it?

Mr. CHERRINGTON: Approximately 3,700 feet.

Senator PEARSON: A rise of 700 feet from Didsbury?

Mr. CHERRINGTON: No. I have not the height, but I think the plant is around a height of 3,700 feet.

Senator HAIG: How many acres are involved? Is it a 100-foot right-of-way?

Mr. CHERRINGTON: A 100-foot right-of-way practically right through.

Senator HAIG: How many acres are involved?

Mr. CHERRINGTON: Roughly 200 acres.

Senator BURCHILL: What is the difference in the mileage between the two routes?

Mr. CHERRINGTON: North from Cremona one alternative route ran around 14 miles. Taking off east of Cremona, about a mile east, it was between 15 and 16 miles. West of Didsbury it is 15.3 miles. So they are all comparable in mileage, with the exception you still have 28 miles of the Crossfield subdivision.

Senator BURCHILL: In addition to the amount of \$750,000 for the upgrading, how do the costs compare on the various routes?



Mr. CHERRINGTON: We have done detailed surveys on the line west of Didsbury; it is approximately \$1,134,000. On one of the alternative routes it is roughly \$1,100,000; and on the other one, roughly \$1,200,000. So for consideration, all based on estimates, they are practically the same, but the one addition is the \$750,000 upgrading on the Cremona subdivision.

Senator BURCHILL: What about the switching?

Mr. CHERRINGTON: With regard to the switching from Didsbury we will be able to put in a yard switcher. That will be built to service the proposed plant, to serve the gas-loading facilities north of Didsbury and to service other industries within 30 miles of Didsbury.

From the Crossfield subdivision, due to labour agreements, the subdivision would be over 30 miles long with the proposed alternate route. Therefore, you cannot put in a road switcher and it would be necessary to run a train out of Calgary to switch this plant at Harmattan, which would make a return trip of roughly 140 miles. It is doubtful the crews could do it in one day and do the necessary switching. Also you would not be able to give the service to the plant that you could give with a road switcher just 15 miles away from the plant.

The CHAIRMAN: There is one question I would like to ask you, Mr. Cherrington. I do not know if you can reply to it. These letters that we have received seem to indicate apprehension by local residents that if we grant you this right to build the line from Didsbury you will immediately attempt to close the Cremona line.

Mr. CHERRINGTON: To my knowledge, Mr. Chairman, the Canadian Pacific has not yet made any study on the abandonment of the Crossfield subdivision.

Senator CROLL: There is a suggestion in one of these letters that you are using very productive land, as against other land that might be available that is less productive.

Mr. CHERRINGTON: I think if I could refer that question to Mr. Sykes, who is the real estate man and has gone into the land.

The CHAIRMAN: Do you wish to hear Mr. Sykes on that?

Senator CROLL: Surely.

Mr. CHERRINGTON: I have been over the alternative routes and I could, maybe, back up Mr. Sykes on the condition of some of the land because I have been all through that country.

Senator ASELTINE: I think we should hear the people who are objecting to this.

The CHAIRMAN: There is this one witness, Mr. Sykes.

Senator ASELTINE: We are hearing the rebuttal before we get to the complaint.

The CHAIRMAN: That is true.

Mr. GORMAN: I think it might be useful to have a very general outline of the work Mr. Sykes has done in dealing with the land with regard to the proposed route.

The CHAIRMAN: Does the committee wish to hear Mr. Sykes?

Hon. SENATORS: Agreed.

**Mr. J. R. W. Sykes, Assistant General Manager, Marathon Realty Ltd.:** Mr. Chairman, honourable senators, I am Assistant General Manager of Marathon Realty Limited, whose head office is in Calgary. Our business is commercial, industrial and agricultural real estate development and investment. I have been responsible for the company's operations in western Canada for the past three years—that is, from the date of its inception. Prior to that I was supervisor of economic projects in Canadian Pacific's Department of Research in Montreal.

Senator CAMERON: Have you any actual experience in farming? Have you a degree in agriculture?

Mr. SYKES: No, sir, I have not a degree in agriculture, but I have been administering these farm lands—some 900,000 acres, and some 4,500 farms—for the past three years with a staff of qualified men, many of whom have a great deal of experience. Some of our field men have degrees in agriculture.

I have had to deal with the acquisition of the right-of-way for the Didsbury-Harmattan line. After consultation with the engineers in the field, and through negotiations with the farmers which went on over a period of many months, we settled on a compromise line that went some way towards satisfying the engineering requirements and, at the same time went as far as possible in minimizing necessary damage to farms.

At that point we started negotiating for options and dealing with the question of compensation. Compensation takes into account the fair market value of the land itself, the degree of damage created by severance or cutting of the farm by the line—there is a measure of inconvenience there—and any special damage such as damage to water supplies or trees, if there are any, and any other factors of particular interest to the land owner.

The status today is that out of 30 land owners involved 20 have come to an agreement with us. Of the remaining ten it appears that one does not like railways and will not have a railway at any price; one has been trying to sell his farm and insists that anyone who takes any land takes the whole farm; and eight want more money but have indicated no objection to the line crossing the land if their terms are met. Of those eight one has stated a price that is double the maximum paid any other land owner, and two others have said: "We will go along with our friend".

The town of Didsbury has written to me and also some honourable senators, I understand, stating that the council has resolved that it is 100 per cent in favour of this location. The Chamber of Commerce of Didsbury, which to some extent represents the interests of the general area and not just the town, has also gone on record as being 100 per cent in favour of this project.

In conclusion, honourable senators, I believe that from last August when we started to talk to farmers up to the present date we have done everything possible to minimize damage and to meet the objections of the farmers, and still provide for a feasible rail location. I am satisfied in my own mind that if this bill is passed we will not have to proceed to arbitration in respect of the majority of the ten owners who have not yet agreed on terms. My opinion is that the settlements that have been made are sufficiently generous having regard to recent arbitration awards that very few farmers would care to take their chance on arbitration.

Senator ASELTINE: How much are you paying per acre?

Mr. SYKES: Depending upon the degree of damage, between \$500 and \$1,000 per acre. The fair market value of the land—

Senator ASELTINE: How does that compare with assessed values?

Mr. SYKES: The assessed value is normally very much less than the fair market value.

Senator ASELTINE: I understand that. In our district it is a quarter of the fair market value.

Mr. SYKES: The assessed value in any case that I know of is \$25 or less per acre.

Senator HAIG: When you run across a section line are there crossings available to the farmer?

Mr. SYKES: You have only the section lines marked on your plan and not the quarter section lines. Where the line crosses a farm it may cross a

completely undistinguished portion of it so as far as the farmer is concerned. If the line goes through the centre of a square mile block, and if crossings are needed, then the railway has agreed to construct crossings where they are asked for. It has also agreed on some fencing if that is required. That is another of the aspects of compensation.

Senator ASELTIME: One of the objections to going east and west instead of north and south is that you would have a railway crossing every mile, whereas in the other direction there would be a crossing every two miles.

Mr. SYKES: I suppose that that is a valid objection in theory, sir. In practice, however, since many of these roads are not constructed it appears from a comparison of the actual crossings on the one route versus the other that that presents very little difference. I think I should refer that question to Mr. Cherrington who has actually examined each of the rail crossings.

Senator BROOKS: What is the average acreage that you are taking from individual farmers?

Mr. SYKES: It varies from one acre to 20 acres. The average might be seven acres. That is the area into which most of them fall.

Senator HAYS: How often will this railway line be used for the movement of sulphur?

Mr. SYKES: I should like to refer that question to Mr. Cherrington, if you do not mind, sir.

Senator FOURNIER (*Madawaska-Restigouche*): Will there be any highway crossings along the route?

Mr. SYKES: I believe so, but I would refer that question to Mr. Cherrington also. That is more of an operating problem.

Senator SMITH (*Queens-Shelburne*): I have one question to ask. You have said that you have agreements with 20 out of 30 land owners. Would you give me some idea as to the percentage of cost that you have allocated to the area of land damage in the adverse effect of breaking up any particular farm?

Mr. SYKES: There is no percentage, sir, that you could identify as such. Each case has been negotiated on its own merits. Each owner, of course, after we questioned him has consulted all of his neighbours to find out their position. I can read to you very quickly the per acre settlement for the 20 farmers. That might give you some idea.

Senator SMITH (*Queens-Shelburne*): No, that would not mean anything to me. Perhaps you could take a stab at it and say from the best of your knowledge what percentage of the cost of the land that you have already acquired would be in the area of land damage compensation.

Mr. SYKES: I can make an informed guess, if that is your wish, sir. I would say it is something like 70 per cent—perhaps a little better. It is a matter of curiosity to me that the land that has been damaged more seriously is that with which we have had the least difficulty. On some farms, because of sloughs and so on, it is impossible to avoid a severance, and yet these farms are owned in most cases by farmers with whom we have come to an agreement. Of the ten farmers who have not yet agreed eight have suffered virtually no severance at all, and two of them have relatively severe severance.

Senator PEARSON: What is the going or market price of land in the area now?

Mr. SYKES: As I think I mentioned, we are corporate farmers, and last summer we looked for a farm. We had some money to spend and we wanted to buy the finest farm we could find. We bought the old Olson place at Didsbury, and paid \$130 an acre for a total of \$80,000. Six weeks later we found that the railway wanted to go through it.



Senator HAIG: Did Marathon and the CPR come to a settlement that summer?

Mr. SYKES: As first they wanted to resist settlement, but the price we paid of \$130 per acre was considered to be a good price for a farm. They are asking prices up to \$150, but I know of none who have paid that price.

Senator BAIRD: What are the sizes of the farms?

Mr. SYKES: A section of 640 acres; half sections, in some cases.

Senator CAMERON: Is Marathon a wholly-owned subsidiary of CPR?

Mr. SYKES: Yes. Our head office is in Calgary, and we are expected to stand on our own feet.

The CHAIRMAN: Senator Gershaw asked if he could revert for a moment to Bill S-32. You wished to ask one question, did you not Senator Gershaw?

Senator GERSHAW: The people of Fox Valley and in the neighbouring towns produce a lot of cereals, and livestock and they ship their goods south and west, mostly to Medicine Hat, which is their natural market. They are apprehensive that if this road is built their business will all be diverted elsewhere, and they want some assurance that their business will not be injured by this particular branch line.

Mr. GORMAN: Perhaps Mr. Roberts is best qualified to deal with the question.

Mr. ROBERTS: It will still provide services as in the past, if that is what is concerning you, senator.

Senator McDONALD: But the proposed branch line extension, as I understand it, will only carry sodium sulphate.

Mr. ROBERTS: That is the express purpose of the construction.

Senator GERSHAW: That is the answer to the question I want. Thank you.

The CHAIRMAN: Any further questions?

Mr. GORMAN: Just to complete this part of the railway's presentation, there are two letters which have been received in support of the application, If I may read them. I am prepared to file the originals, if I have the approval of the committee.

Some Hon. SENATORS: Agreed.

Mr. GORMAN: The first letter is from the Town of Didsbury dated May 25, 1966. It is addressed to J. A. Wright, Q.C., Vice-President of Law, Windsor Station, Canadian Pacific Railway Limited, Montreal 3, Quebec, and reads as follows:

Dear Sir,

Re: Rail Line—Didsbury to Canadian  
Superior Plant

With regard to the above mentioned, the Council of the Town of Didsbury wishes to state its position, herewith going on record as being 100 per cent in favour of the project.

The Council of the Town of Didsbury is in full support of the endeavour to construct a rail line from the town to the Canadian Superior Gas Plant and is prepared to assist in any way possible.

We are hoping very much that the branch rail line in question meets with your approval.

Yours truly,  
Louis L. Damphouse,  
Secretary Treasurer.



The second letter, dated May 25, 1966, is also addressed to J. A. Wright, and is from the District of Didsbury, Chamber of Commerce and reads as follows:

Dear Sir,

The Didsbury and District Chamber of Commerce wish to go on record as being unanimously in favour of the branch rail line which the CPR is building to the Canadian Superior Gas plant originating from Didsbury.

The members feel that it is the most logical and most economically feasible route, giving much less construction problem than other suggested routes.

We shall be very glad to do all in our power to support this route.

Yours very truly,  
Didsbury and District Chamber  
of Commerce  
per Secretary G. C. Leeson

The CHAIRMAN: Does that complete your presentation?

Mr. GORMAN: Yes.

Senator PEARSON: Mr. Gorman, has Canadian Pacific Railway a vested interest in Canadian Superior?

Mr. GORMAN: I think Mr. Roberts might answer that question.

Mr. ROBERTS: I would prefer that Mr. Bohannon answer the question.

Mr. BOHANNAN: All I can say is that Canadian Superior is a dominion stock company and to my knowledge Canadian Pacific is not a stockholder, at least not a major stockholder, and does not in any way control the company.

The CHAIRMAN: Before we call upon the opponents, I think I should place on record two letters addressed to the committee by local residents. The first is dated May 20, 1966 and is from Madden, Alberta. It reads as follows:

Dear Sirs,

In regard to the proposed Didsbury Panther Harmattan CPR branch line, I urgently request that the committee recognize the importance of the CPR line between Crossfield and Cremona, both to me, as a farmer, and to the agricultural economy of this area.

If a charter is granted for the building of a CPR line between Didsbury and Harmattan, we earnestly implore that this line will in no way interfere with the already existing line between Crossfield and Cremona and that no abandonment of this line will be considered, now or at any future date.

Yours truly,  
Leslie Godlonton  
Madden, Alberta.

The second is dated May 21, 1966. It is from Cochrane, Alberta, and reads as follows:

Dear Sirs,

We certainly do not want the train to be discontinued from Crossfield to Cremona as it would make us haul our grain 18 miles to elevator in Cochrane. It just seems like they are trying to do away with the small farmer. But we do have to live too. And this would really make it bad

for us to remove that track. A person could make three or four trips to Dog Pound while making one to Cochrane. Hoping the little man will be heard in this deal. Thanking you.

Edward Bundt  
Cochrane, Alberta, Canada

Well, the "little men" have been heard from and their representations are on the record.

The witness we have in opposition to this bill is Mr. W. J. Bagnall, representing the county of Mountain View, Alberta. Will you come forward please. It was you who supported this brief, was it not, Mr. Bagnall?

**William J. Bagnall, Reeve, County of Mountain View, Alberta:** Yes, sir.

The CHAIRMAN: Perhaps the best thing for you to do is to read your brief, and we can cross-question as we proceed. Would that be the best way, honourable senators? Then if that is satisfactory to you, Mr. Bagnall, please proceed.

Perhaps you should read the brief.

Mr. BAGNALL: Mr. Chairman, honourable senators, before proceeding with my brief I should like to say that the proposed railway line has no connection whatever with the Town of Didsbury and it starts a mile north of the town.

On behalf of the county council of the County of Mountain View, may I thank Senator Prowse for his very fair and able presentation of Bill S-34 on behalf of the railway company, and Senator Cameron for his remarks relative to the county's interest in this bill and the proposed Canadian Pacific Branch line.

In presenting to you the county's brief in connection with the railway company's application, the presentation has been divided into three parts. Part 'A' reflects the county's opposition to construction of the line from Didsbury to Harmattan. Part 'B' supports the county's proposal that his line should be a continuation of the existing line from Crossfield to Cremona, and Part 'C' is a historical background and conclusion.

#### PART 'A'

May I say at the outset that the county has no objection in principle to the construction of a rail line outlet from the Canadian Superior Plant at Harmattan, and realizes this necessity. The county acknowledges that the railway company has greatly improved the final plans for the line location over the original plans and that far less land severance has been created if the plans submitted to the county dated May 2, 1966, are strictly adhered to.

In spite of the fact that the CPR has improved the proposed line profile, there remains several very real objections to this route; these can be briefly outlined as follows:

1. *Land use:* The proposed route will most certainly traverse some of the most fertile land in the country, if not in the entire Province of Alberta.

The county zoning by-law prohibits the subdivision of arable land in order to conserve this vital national asset for its primary use—the production of crops.

If another developer were to attempt to subdivide farm land for a non-farm purpose he would be refused permission to do so by the county council.

This policy of conserving productive farm land is a sensible one and has proven satisfactory during the past five years of operation.

2. *Separation:* Because of the nature of the development it is unavoidable for the CPR with its spur, to effect separation of one part of a farm from the remainder. Apart from the added cost in perpetuity which will arise in farming such parcels, it is highly probable that these higher costs will be such as to cause many of these parcels to be disposed of as acreages. As the spur line will create a registered boundary it could well be argued that as no subdivision is occurring—it already having been affected through the registration of the right-of-way—the county council would have great difficulty in refusing such a change in use. As a result, far more land than that involved within the right-of-way would in perpetuity be lost to the production of crops. The remainder of the farm which at present is an economic unit—ratio of investment to production—could be so reduced by these subtractions and divisions as to be rendered uneconomic.

3. School bus crossings will be increased by approximately twelve additional crossings.

3a. At least four fly-overs will be required as this line will cross four district highways. If the charter is granted this provision must be written in.

4. Restricts northward the development of the Town of Didsbury. This does not seem to worry them too much.

5. The difficulty of farming parcels of land divided by a railway adds immeasurably to the overall damages and cost of operation, and cannot be compensated for by the cash settlement proposed by the CPR.

#### Part 'B'

Alternative route—Cremona-Harmattan via Little Red Deer River

A. We do not feel that the route from Cremona north-westwards has been fairly or completely analysed.

If such a route were practical, even if more expensive, it must be chosen if the concept of conserving arable land for production is to be continued as a valid policy. The nature of the land in this area is such that it is inferior because of its capabilities to bear crop to the preferred route—that is the route preferred by the CPR—and as a result it is very possible that no loss in productivity would ensue if the spur was so located.

B. The argument that the Crossfield-Cremona line is not able to support the proposed weights is one which, while it must be given consideration, should not be the determining factor. Although the cost of up-grading the present line has been estimated at \$500,000—this is the figure which the CPR originally gave to the County of Mountain View—it can well be argued that this is a cost which the CPR will have to meet anyway or else, because of it, abandon the line altogether. It is felt that the CPR should state their intentions on this point so that the present confusion could be avoided.

C. The fears expressed by some four hundred farmers and landowners in the Crossfield-Cremona area that if the new line is constructed it will result in the eventual abandonment of the Crossfield line by the CPR are, it is submitted, well founded. Should this line be abandoned at a later date, these farmers will be faced with lowered farm assessment values and an increase of at least 4c per bushel transportation costs on grain which will then have to be delivered to the main CPR line.

#### Part 'C'—Historical Background

1. The county council and indeed the farmers and ratepayers of this particular area which encompasses over one-half million acres of choice arable



land tributary to the Cremona-Crossfield line are convinced that when the Government of Sir John A. MacDonald wrote the original terms of reference into the land grant for the CPR in 1870, it took into consideration the unflattering, critical and adverse reports of Sir George Simpson, Captain John Palliser and Sir John Franklin.

2. It is submitted that these reports dealt particularly with that part of Canada which the Canadian Pacific Railway Company intended primarily to open up and to service with a railway system. The vast land grants and resources, exceeding twenty-five million acres, were the Government's method of underwriting and guaranteeing the solvency of the railway operation for all time. Surely, it is now contended the Government of Canada must reiterate these conditions and insist that the railway company live up to the original contract to operate and maintain an efficient railway system throughout the length and breadth of this country.

3. Speaking generally, the people of this country, and in particular those whom I have the honour to represent have every right to expect the government of today to insist that the tremendous profits realized by the CPR from their land grants must first of all be plowed back into the railway system rather than into new endeavours such as the construction of the new twenty million dollar Hotel Château Champlain in Montreal. The lucrative Canadian Pacific Gas and Oil Company Canadian Pacific's \$192 million investment fund would indicate that substantial reserves are available to operate a railway line to serve the people of Canada first, and still satisfy the insatiable appetites of the company's shareholders.

#### Conclusion

The county council respectfully requests that if in its wisdom Parliament decides to grant this application, that the following crucial clauses be written into the charter:

- (a) That the route will adhere strictly to that outlined in the plan dated 2 May, 1966.
- (b) That fly-overs be constructed at locations A, B, C, and D located on the map and crossing district market highways.
- (c) That the construction of this line shall in no way interfere with the continued maintenance and operation of the present Crossfield-Cremona line.
- (d) That assurance will be given by the Canadian Pacific Railway Co. that no abandonment of the existing Crossfield-Cremona line will be proposed and the continued economy of the area will thus be protected.

Gentlemen, if you turn to page 5, there is a short addendum I would like to read, if I may.

The CHAIRMAN: Go ahead.

Mr. BAGNALL: It is noted that the Canadian Pacific Railway Company has made no mention of the fact that this line will eventually be extended south-westerly from Harmattan to the vast sulphur deposits in the Panther River area.

When this extension is proceeded with, it is contended that the logical take-off for this extension will be from a point immediately north of Cremona. It should be noted that information relative to the Panther deposits was made initially by the railway company themselves, and was referred to briefly by Senator Cameron during his presentation, as will be found in *Hansard*, page 537, Volume 115, Number 33.



As appendices I have selected two letters which have been sent to the county and which are self-explanatory and which you may have read.

In addition to those letters which I selected as fairly representative letters, I have received all these letters from representatives of this area, supporting the county's position. If I may, I would like to table those letters at this time for your information.

The CHAIRMAN: How many of them are there?

Mr. BAGNALL: I have around 80, sir. I notice that, unfortunately, the Town of Didsbury have made some references in support of the company's application. The Town of Didsbury were asked by the CPR for support and they were told, the implication was made, that when this line is operating, industry would naturally follow the line and the Town of Didsbury would prosper. This, gentlemen, I submit is not a true statement. However, the council proposed to accept it. The key map for the Canadian Pacific railroad which was passed around for you to study is not very fair in that it does not indicate the actual location of Cremona, Didsbury, and the plant. Cremona is far better located than indicated on the map.

Senator BURCHILL: Does the county of Mountain View embrace the whole area?

Mr. BAGNALL: Yes, the county of Mountain View at the present time is in the process of constructing a district road or a bypass for the town of Didsbury for Canadian Superior Oil, Ltd. It is also true that the company pays considerable taxes to the County of Mountain View, something like \$158,000 a year. As a matter of fact the oil industry pays one-third of our taxes, so we are fortunate to live in this area. This is apart from the taxes paid by the Canadian Pacific Railway Company.

The CHAIRMAN: I think all senators have this brochure which was circulated and can see the map with Didsbury on it.

Senator PROWSE: The entire line is within the County of Mountain View. And at no place does it touch the town of Didsbury. Is Didsbury the county seat?

Mr. BAGNALL: Yes.

Senator ASELTINE: That is where all the municipal offices are?

Mr. BAGNALL: Yes.

Senator ASELTINE: These people who wrote the letters, are they affected in any way by the line crossing their land?

Mr. BAGNALL: Yes, sir.

Senator ASELTINE: Because we have had some evidence from the railway company that over half of those affected have agreed not only to the crossing, but to the price and to the damages and so forth.

Mr. BAGNALL: I think if the Canadian Pacific Railway Company will divulge the names of the people who signed options you will find that the same names appear as signatures on this objection.

Senator HAIG: Why would they make a settlement with the railway company and then sign objections?

Senator ASELTINE: Anybody who takes a petition around anywhere will find people to sign it.

Senator HAIG: We have also heard that the land in this new proposed subdivision is equal in value or approximately equal in value to the land involved in the proposal you make running to Cremona.

Mr. BAGNALL: No, sir, it is not the same. The land value from Cremona to Harmattan is only half the assessed value of the other. I have submitted tables

of the assessed costs. I do not know if it was made clear that Marathon Realty is a wholly-owned subsidiary of Canadian Pacific Railway Company.

Senator HAIG: They told us that, and I asked a question about when the Canadian Pacific Railway were interested in the land did Marathon make a settlement with the CPR, and if they did was it for the same value as in these.

Mr. BAGNALL: This is true to a point, but when Marathon Realty initiated the discussions with the farmers they did not tell the farmers this was for Canadian Pacific Railway Company and this would eventually be a railroad line. The implication made last February when Marathon Realty made their overtures was that they were just buying this land.

Senator HAIG: Are you indicating that if a company goes to a farmer to buy a certain piece of land that the farmer does not know there is going to be a railroad line constructed?

Mr. BAGNALL: In this case—in many cases, no. That is my information.

Senator HAYS: What would they think the purpose was?

Mr. BAGNALL: That it was just to purchase their farms. They bought six quarter-sections in the vicinity of the plant at \$130 an acre. This seemed to be another ploy to obtain control of the land without declaring its ultimate use.

Senator PROWSE: Is your farm in this area?

Mr. BAGNALL: My farm is a tributary to the Cremona-Crossfield line.

Senator PROWSE: It is on the line between Cremona and Harmattan?

Mr. BAGNALL: Yes.

Senator PROWSE: Would you sell your farm at the same price as other land?

Mr. BAGNALL: I have had offers for my land at about \$130 an acre, but this is tributary to the existing line from Crossfield to Cremona. If the line were continued from Cremona to Harmattan—it is further west and not as productive and not as valuable.

Senator HAYS: It is about two miles west; how far are you from Cremona?

Mr. BAGNALL: I am about eight miles southeast of Cremona.

Senator HAYS: This line will run parallel three miles west of where you are?

Mr. BAGNALL: Northwest.

Senator HAYS: Taking the north and south line, how far east of that line—extend the north-south line, and take it south to Cremona—

Mr. BAGNALL: Yes.

Senator HAYS: You are three miles east?

Mr. BAGNALL: Yes. It continues on northwest—it goes over to Cremona which is three miles west of me.

Senator HAYS: If this line went from Cremona to Harmattan, do you think the farmers would object in the same way?

Mr. BAGNALL: This proposal has been kicked around for some considerable time. The position of the county council has been well known since last February when we first were aware that the Canadian Pacific Railway were interested in this. We have received no objections whatever from the farmers in the Cremona area and I think these letters will substantiate that.

Senator HAYS: Maybe they would like to sell at \$500 or \$1,000 an acre.

Mr. BAGNALL: That is not altogether the case. You cannot relate everything to dollars and cents so far as these farmers are concerned all the time. They like their homes and this is a well built up, prosperous county, as you well know. They are not anxious to move out. As well as that the CPR are not buying

whole farms; they are buying small parcels. They are just going through the farms. I would object to them going through my farm because it would be a tremendous headache having a railway line going through the middle of your land.

Senator PROWSE: Isn't it true that of the 30 farms involved, 20 have already completed and signed options?

Mr. BAGNALL: The CPR have already said that.

Senator PROWSE: And another eight have agreed in principle, but they are arguing about the price.

Mr. BAGNALL: Well—

Senator PROWSE: And there are only two who say they don't want to sell at all. They say that no matter what the price is they don't want it.

Mr. BAGNALL: This is what Canadian Pacific implies.

Senator PROWSE: So that the others don't object to the railroad going through there. They will sell the land if they get the price?

Mr. BAGNALL: I think the feeling of the average farmer is that if the line has to go through and if he has to be stuck with the line then he is prepared to settle for a suitable price. But basically they do not want the line.

Senator PROWSE: None of them would have to relocate their homes as a result of the line?

Mr. BAGNALL: Not to my knowledge.

Senator PROWSE: It would not mean they would have to find new locations?

Mr. BAGNALL: No, not to my knowledge.

Senator McDONALD (*Moosomin*): You referred to fly-overs. I am not familiar with that term. What does that mean?

Mr. BAGNALL: That is an overpass.

Senator CROLL: If there are no more questions, I am prepared to move the bill.

The CHAIRMAN: I wanted to make one observation in connection with the conclusions of your brief on page 4. You say:

The county council respectfully requests that if in its wisdom Parliament decides to grant this application, that the following crucial clauses be written into the charter:

That is, into the bill.

(a) That the route will adhere strictly to that outlined in the plan dated May 2, 1966.

What is that plan?

Mr. BAGNALL: The one filed with the County Council.

The CHAIRMAN: I would like to ask our Law Clerk a question. Do we have any actual jurisdiction over the route once we have granted the right to build from one place to another?

The LAW CLERK: No, that is for the Board of Transport Commissioners.

The CHAIRMAN: I am just indicating to you, Mr. Bagnall, that in order to carry out the request in clause (a) you should make your representations to the Board of Transport Commissioners. I think the same applies with regard to clause (b), which reads:

(b) That fly-overs be constructed at locations A, B, C and D located on the map and crossing district market highways.

I do not think I have ever seen any railroad bill go through Parliament which states the fly-overs have to be at such-and-such a point. That, again, is a matter for the Board of Transport Commissioners.



The LAW CLERK: We indicate only the extremities and the approximate length of line.

The CHAIRMAN: In other words, your representations on fly-overs should be made to the Board of Transport Commissioners.

- (c) That the construction of this line shall in no way interfere with the continued maintenance and operation of the present Crossfield-Cremona line.

We cannot put that into the bill very well.

Senator CROLL: If they should decide to abandon, they have to go to the Board of Transport Commissioners.

The CHAIRMAN: Yes. Is there not some legislation about to be introduced in Parliament with respect to this whole abandonment question?

Senator CROLL: Yes, and even the abandonment of *The Canadian* too.

The CHAIRMAN: I just point this out to you, but I do not think we can put any of this into the bill. They are dealt with in other quarters, largely by the Commission.

- (d) That assurance will be given by the Canadian Pacific Railway Company that no abandonment of the existing Crossfield-Cremona line will be proposed and the continued economy of the area will thus be protected.

I do not think you can ask the Canadian Pacific Railway to declare forever they will operate that line. But, there again, if that line should be proposed to be abandoned by the CPR under any legislation I am perfectly certain that everybody who has any interest will have the right to come and appear before the Board of Transport Commissioners, or whoever it is. We could not put it into the legislation.

Mr. BAGNALL: I think the County Council's position is that we recognize the tremendous power this committee has and we did not want that overlooked in any way at all. We have the interests of the farmers and ratepayers to protect, and we would look to this committee to use their influence in that connection.

The CHAIRMAN: We are very glad to have had you appear before us. After all, we are the servants of the public, we have to hear what the public has to say about it, and we are very glad to have your representations.

Senator BURCHILL: Mr. Chairman, you say this is a matter quite properly for the Board of Transport Commissioners.

The CHAIRMAN: Yes.

Senator BURCHILL: What is the power of Parliament with respect to it?

The CHAIRMAN: We give the right to build a line from point "A" to point "B" for so many miles, but we do not specify the actual route and as to whether, for instance, there should be bridges or tunnels, or whatever it is. We do not have anything to do with that. Again, that is a matter for the Board of Transport Commissioners.

Senator PROWSE: In other words, we are dealing with the principle and not the detail.

The CHAIRMAN: Exactly.

Senator CROLL: I move adoption of the bill.

Senator ASELTINE: I would like to congratulate the County of Mountain View on its brochure. I have never seen anything to equal it. It is absolutely marvelous and I certainly think it must be a wonderful district.

The CHAIRMAN: It certainly looks that way.

Senator CAMERON: I would like to second what Senator Aseltine has said. I have not seen in Alberta any brochure or advertising literature to compare with



this. This indicates something of the morale of the people and their pride in their community.

While I am sure most of us are delighted with the economic development represented by this sulphur plant at Harmattan and other possible projects in the area, I am sure we will give every protection possible to these farming people who are anxious to protect their land.

To my knowledge, this is the first time a group of farmers have gone to this expense to express concern over land use, and this is a very healthy thing to happen in this country. I think Mr. Bagnall should be congratulated, along with his Council, for what they have done. I hope we will find a mutually satisfactory compromise to satisfy everyone concerned.

Senator ASELTINE: I also congratulate them for their fine brief.

The CHAIRMAN: Is the committee willing to consider the bill now?

Hon. SENATORS: Yes.

The CHAIRMAN: Section 1: "Line of Railway Authorized." Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2: "Plans for Completion." Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the Preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the Title carry?

Hon. SENATORS: Carried.

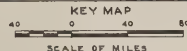
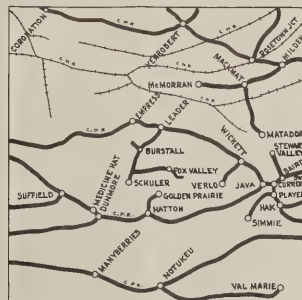
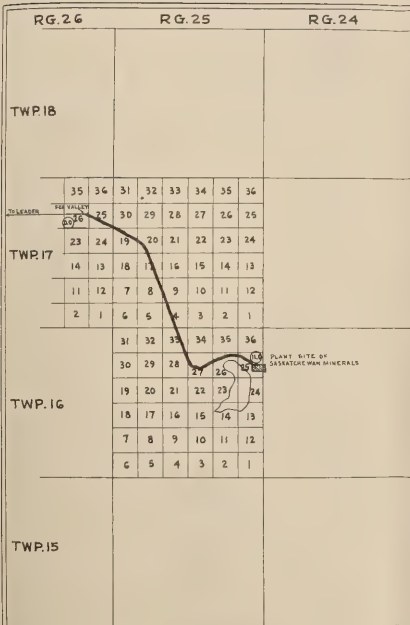
The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The CHAIRMAN: I think, honourable senators, we have already said enough to indicate to Mr. Bagnall how happy we are to have had him here.

The committee adjourned.





# CANADIAN PACIFIC RAILWAY COMPANY

## MEDICINE HAT DIVISION

### PLAN OF APPROXIMATE LOCATION OF INGEBRIGHT LAKE BRANCH FROM

FOX VALLEY (N.E. 1/4 SEC. 26, TWP. 17, RG. 26, W. 3. M.)  
TO

SEC. 25, TWP. 16, RG. 25, W. 3. M.

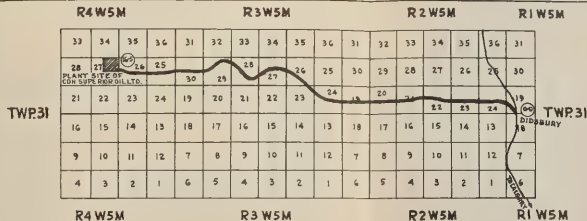
NEW LINE— SCALE 1/2" = 1 MILE

OFFICE OF THE CHIEF ENGINEER, JAN. 28, 1966  
DEC. 29, 1965

FILED IN PLAN ROOM  
JAN 23 1966  
CHIEF ENGINEER  
MONTREAL







FILED IN PLAN ROOM

JUL 29 1965

CHIEF ENGINEER'S OFFICE  
MONTREAL

KEY MAP

SCALE IN MILES

## CANADIAN PACIFIC RAILWAY COMPANY CALGARY DIVISION

### PLAN OF APPROXIMATE LOCATION OF DIDSBURY WESTERLY BRANCH

FROM  
SEC. 19, TWP. 31, RGE. 1, W 5<sup>TH</sup> M.  
TO  
SEC. 27, TWP. 31, RGE. 4, W 5<sup>TH</sup> M.  
MILE 0.0 - 16.5  
ALBERTA

NEW LINE: ———  
OFFICE OF THE CHIEF ENGINEER

SCALE: 1/2" = 1 MILE

JULY 6 1965  
MAY 5, 1966



## APPENDIX C

Didsbury, Alberta, February 16, 1966.

To the Person or Persons whose responsibility it is to make the ultimate decision concerning the location of the railway which is to be constructed to serve the gas and sulphur processing plant of Canadian Superior at Harmattan in the County of Mountain View:

For the reasons outlined below we wholeheartedly support Mr. Bagnall in his contention that this railroad should not be built west of Didsbury as the CPR is currently proposing to do but rather that it should be built from Cremona north to the Plant.

1. The land west of Didsbury is high quality agricultural land and as all thinking and informed persons are aware, this type of land is becoming increasingly valuable for the production of food in this hungry world with its fast growing population. At the annual meeting of the Canadian Agricultural Chemicals Association at Banff last September former Agriculture Minister Harry Hays predicted that Canada would require another 40 million acres of land to meet the needs of our expanded population in the year 2000, and since we do not have this much land we will have to make better use of the land we have. In view of Mr. Hays' prediction and the estimates of many other persons who are in a position to know, it is obvious that the importance of conserving this most valuable resource cannot be overemphasized.

Unfortunately, every year a great many acres of food producing land are being damaged or taken completely out of production by industrial expansion, roads and the urban sprawl. Much good land in the west Didsbury area has already been taken or has suffered extensive damage in the drilling for oil, construction of pipelines and other operations of the oil industry. We realize that some land must be taken for such purposes but we also strongly feel that every effort should be made to avoid the unnecessary taking of or damage to good agricultural land.

The land west of Didsbury is rolling and so to obtain the desired grades the railroad will be very winding with the result that the acreage taken and/or adversely affected will be considerable. On the other hand, the route from Cremona is shorter (in a straight line the distance is about  $9\frac{1}{2}$  miles as compared with  $14\frac{1}{2}$  from Didsbury) and although this line too would be winding, unless special equipment were used to overcome the inclines, most of the country through which the railroad would pass is of less valuable agricultural type and so the damage would not be so extensive nor so serious.

2. Because of the pattern used for the laying out of roads in this country, a railway running from east to west would cross a road every mile while a railway running from north to south would cross a road every two miles. Considering this and the fact that the east-west Didsbury route is much longer than the north-south Cremona route, it can be seen that a line from Didsbury to the Plant would cross more than twice as many roads as would a line from Cremona.

It follows therefore that the proposed Didsbury railroad would create many more hazards to traffic, particularly to school buses which would have to cross the line numerous times a day. Naturally this greatly concerns all of us whose children must ride on these buses.







First Session—Twenty-seventh Parliament  
1966

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

## TRANSPORT AND COMMUNICATIONS

---

The Honourable A. K. HUGESSEN, *Chairman*

---

No. 6

---

### *First Proceedings on the Bill*

S-35, "An Act respecting the prevention of employment injury in federal works, undertakings and businesses."

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WEDNESDAY, JUNE 15, 1966

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### WITNESSES:

The Honourable John R. Nicholson, Minister of Labour; Mr. W. G. McGregor, Vice-Chairman, National Legislative Committee, Brotherhood of Railroad Trainmen; Mr. Reuben Spector, Q.C., Canadian Coordinating Committee of Teamsters for Canada; Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Department of Labour; Mr. W. B. Davis, Solicitor, Department of Labour; Mr. Arthur Gibbons, Brotherhood of Locomotive Firemen and Enginemen.

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Adrian K. Hugessen, *Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 7, 1966:

"The Honourable Senator Roebuck moved, seconded by the Honourable Senator Haig, that the report be taken into consideration at the next sitting of the Senate.

After debate, and—

The question being put on the motion it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Croll moved, seconded by the Honourable Senator Benidickson, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, June 15, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.00 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aird, Beaubien (*Provencher*), Bourget, Connolly (*Halifax North*), Dessureault, Fournier (*Madawaska-Restigouche*), Gershaw, Hays, Hollett, Isnor, Kinley, Lang, Lefrançois, MacDonald (*Brantford*), McCutcheon, McElmon, McGrand, Paterson, Rattenbury, Roebuck.—(21)

*In attendance:* Mr. E. Russel Hopkins, Senate Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Kinley, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

Bill S-35 "An Act respecting the prevention of employment injury in federal works, undertakings and businesses" was read and considered.

The following were heard:

The Honourable John R. Nicholson, Minister of Labour,

Mr. W. G. McGregor, Vice-Chairman, National Legislative Committee, Brotherhood of Railroad Trainman,

Mr. Reuben Spector, Q.C., Canadian Co-ordinating Committee of Teamsters for Canada,

Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Department of Labour,

Mr. W. B. Davis, Solicitor, Department of Labour,

Mr. Arthur Gibbons, Brotherhood of Locomotive Firemen and Enginemen.

Further consideration of the Bill was postponed.

At 1.05 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Patrick J. Savoie,  
*Clerk of the Committee.*



**THE SENATE**  
**THE STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Wednesday, June 15, 1966.

The Standing Committee on Transport and Communications to which was referred Bill S-35, respecting the prevention of employment injury in federal works, undertakings and businesses, met this day at 11 a.m. to give consideration to the bill.

Senator A. K. HUGESSEN in the Chair.

The CHAIRMAN: Honourable senators, it is 11 o'clock and I see a quorum. I will ask the committee to come to order.

We have for consideration this morning Bill S-35, briefly known as the Canada Labour (Safety) Code. This is an important public measure originating in the Senate, and I would ask for the usual resolution authorizing the reporting of our proceedings and the printing thereof.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Gentlemen, before we indicate who the witnesses are to be, I wish to inform you that I have received some communications in connection with this bill which I think I should communicate to the Senate. I received a letter on June 9th from the Canadian Trucking Associations Inc., signed by Mr. John Magee, General Manager. He said the Canadian Trucking Associations might wish to submit a brief but that they had not had time to prepare one and he wanted to know whether we would be willing to receive one. I communicated with Mr. Magee and I have a further letter from him, dated yesterday, which I shall read to the committee.

Canadian Trucking Associations Inc. has carefully considered all of the provisions of Bill S-35 and in regard to our letter to you of June 9, and your notification today by telephone of hearings of the Senate Committee on Transport and Communications commencing tomorrow at 11:00 a.m., I wish to state that the Associations will not be making a submission.

Canadian Trucking Associations has at all times supported the cause of safe operation by the trucking industry. We believe that the industry has achieved a safety record which, though not perfect, will stand comparison with the record of the trucking industry anywhere in the world.

We support any legislation that will assist in the attainment of maximum safety within the industry to the extent that such legislation is

soundly conceived, practical in regard to implementation, and does not duplicate existing safety regulation applied to federal motor carrier undertakings by some provincial governments.

Yours sincerely,

John Magee,  
General Manager.

Is Mr. Magee here by any chance?

Senator ROEBUCK: Or Mr. J. O. Goodman?

The CHAIRMAN: The other communication I have received is from the Canadian Labour Congress; it is a letter dated yesterday and signed by Mr. Claude Jodoin, and he says:

Our Mr. Hepworth, Assistance Director of Legislation, was in touch with you this morning regarding the Committee hearings on Bill S-35. we are happy to learn that there is a possibility of making representations a bit later, as we have been unable to make suitable preparations up to now.

The Congress would welcome an opportunity to present a brief submission if there are further hearings of your Committee, or alternatively, to send to you in writing our suggestions with respect to this exceedingly important Bill, to become known as the Canada Labour (Safety) Code.

Looking forward to hearing from you and with best wishes.

Yours sincerely,

Claude Jodoin.

That means we are likely to have a submission from the Canadian Labour Congress which we will have to consider at a further meeting.

In the meantime, I am advised that the witnesses before us this morning are to be the Honourable John R. Nicholson, Minister of Labour, who is not here yet; Mr. Bryce Mackasey, Parliamentary Secretary to the Minister of Labour; Mr. J. H. Currie, Director of the Accident Prevention and Compensation Branch; Mr. W. B. Davis, Departmental Solicitor; Mr. J. O. Goodman, The Automotive Transport Association of Ontario; Mr. J. F. Walter, the Brotherhood of Locomotive Engineers; Mr. Arthur Gibbons, the Brotherhood of Locomotive Firemen and Enginemen, who has another meeting and is expected to be here at about half-past 11, and I understand that he has a brief to submit to us; Mr. W. G. McGregor, the Brotherhood of Railroad Trainmen, who has a brief; Mr. Reuben Spector, Q.C., the Canadian Co-ordinating Committee of Teamsters for Canada; Mr. K. McDougall, Executive Member of the Canadian Co-ordinating Committee of Teamsters for Canada.

Senator ROEBUCK: Mr. Jack Walter, of the Brotherhood of Locomotive Engineers, and Mr. W. G. McGregor, of the Brotherhood of Railroad Trainmen, are here. They have a brief and I think would be prepared to submit it at your convenience. In addition to Mr. Arthur Gibbons, of the Brotherhood of Locomotive Firemen and Enginemen, whom you have mentioned as coming later, there is also Mr. J. A. Huneault, of the Brotherhood of Maintenance and Way Engineers, who will be here with Mr. Gibbons at a later hour. As I say, Mr. Walter and Mr. McGregor are prepared to proceed at your convenience.

The CHAIRMAN: I would assume what we had better do is, first of all, to hear the proponents of the bill, the minister and parliamentary secretary, and then go on with such briefs from other people as may be available, knowing



that we cannot proceed with the detailed consideration of the bill until we have received these briefs and that we shall have to have another meeting anyway for that purpose. Does that meet with the approval of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: Neither Mr. Nicholson nor Mr. Mackasey is here. Pending their arrival, or the arrival of one of them, perhaps we should hear the briefs people are ready to submit to us to start with.

We have here—and I think it has been circulated to the members—a brief prepared by the Canadian Railway Labour Executives' Association. Shall we hear them to start off with?—unless there is anybody, other than the minister or his parliamentary secretary, who is willing to explain the bill.

Senator ISNOR: Mr. Chairman, it is only fair to point out that the minister has another very important appointment this morning at 11 o'clock, at which he might be called upon to make a report with regard to the recent settlement of the strike. I think we should know that and bear it in mind.

Senator McCUTCHEON: I think we should have the minister and parliamentary secretary here.

The CHAIRMAN: To start with?

Senator McCUTCHEON: I would prefer that, to start with. If the minister is tied up we might sit later today, or tomorrow.

The CHAIRMAN: The only trouble about sitting later today is that there is a meeting of the Standing Committee on Banking and Commerce set for 2 o'clock. I understand the sitting of the Senate is not going to be very long this afternoon. We might perhaps adjourn until after the Senate rises this afternoon.

Senator McCUTCHEON: I think that would be most satisfactory. Surely, we want to hear what the minister has to say as to the necessity of the bill before we hear these briefs.

The CHAIRMAN: That is the usual procedure, I must say.

Senator McCUTCHEON: I move we adjourn now, to reconvene immediately following the adjournment of the Senate this afternoon.

The CHAIRMAN: Does that meet with the approval of the committee?

Senator ISNOR: It seems unfair to those who have come here.

Senator ROEBUCK: Decidedly unfair. It may be they would like to hear what the minister has to say. What do you have to say to that, Mr. McGregor? Would you like to present your brief now, or would you rather wait until you have heard what the minister has to say about it?

Mr. W. G. McGregor, Brotherhood of Railroad Trainmen: At the discretion of the committee, it might be well to hear the minister explain the bill to honourable senators.

Senator ROEBUCK: If they agree there is no unfairness about it. That is all right, is it, Mr. Walter?

Mr. J. F. Walter, Brotherhood of Locomotive Engineers: Yes, that will be satisfactory.

Mr. Reuben Spector, Q.C., Canadian Co-ordinating Committee of Teamsters for Canada: As far as I am concerned, the bill is very clear. I am not acquainted with your procedures, but I am really ignorant of what the honourable minister might say. As far as we are concerned, I have several points to clarify in the bill with regard to land transportation, and if you would care to hear me I would explain it right now. We are very pleased with the bill and have advocated a

safety bill for about six years. A brief was presented to the Minister of Transport and the Minister of Labour by our committee, and we are pleased it has now come to fruition. In so far as the bill is concerned, on the question of definitions, if I might be permitted I would proceed to explain.

The CHAIRMAN: I think we will have to decide what our procedure is to be. I have a motion that we adjourn until the Senate rises this afternoon.

Senator ISNOR: Have you sent out to see whether the minister is available?

The CHAIRMAN: Yes.

Senator ISNOR: Then why not hold up the motion until we know?

The CHAIRMAN: An attempt is being made to locate Mr. Mackasey, the parliamentary secretary. Shall we adjourn for half an hour, or do you wish to proceed in the meantime with any other recommendations?

Senator ROEBUCK: Why not hear the person who is ready here to give his view? Once he has given us that, he is all through. Why should not we hear him?

Senator McCUTCHEON: Perhaps the minister and the parliamentary secretary would like to hear him, if he is going to advocate changes in the bill.

The CHAIRMAN: We can adjourn until after the Senate rises this afternoon, or go ahead for the moment with the witnesses ready to make representations.

Senator ROEBUCK: Or we could adjourn for half an hour.

Senator McCUTCHEON: We could adjourn until a quarter to 12.

The CHAIRMAN: It is moved that we adjourn until a quarter to 12.

Hon. SENATORS: Agreed.

The CHAIRMAN: Thank you, gentlemen.

*(Short adjournment.)*

The CHAIRMAN: The minister is here now, gentlemen. I think we should send a messenger to the members who left with a view to coming back at a quarter to 12. Senator McCutcheon, just after you left the Minister turned up, but we decided not to proceed until you returned.

Senator McCUTCHEON: Thank you very much, Mr. Chairman.

The CHAIRMAN: I will ask the Minister, the Honourable John R. Nicholson, to give us a short explanation of the bill.

**Hon. John R. Nicholson, Minister of Labour:** Honourable senators, I want, first of all, to apologize for being a little late. There was a very important meeting of a representative group of cabinet ministers with representatives of the railway brotherhoods and the Canadian Congress of Labour who came here from several parts of Canada to discuss another matter. It was anticipated that we would complete our discussions before 11 o'clock, and we finished at exactly eleven minutes after 11. However, we could not let them disperse, after their having come these distances, without having the last few words with them. I apologize most sincerely for the delay.

Perhaps a few words about the history of this bill would be helpful. Last year when the Canada Labour (Standards) Code was before the House of Commons the Government indicated its intention of putting forward a companion measure, which would be designed to protect the safety and well being of workers during the course of employment in federal works, undertakings and businesses. The general purpose of the proposed legislation, as you will see from the bill, is to require industries under federal jurisdiction to observe minimum occupational safety standards. The bill, if it carries your judgment and that of the other house will vest in the Department of Labour responsibility for the

development of certain safety standards, and for regulation and inspection of places of work that come within federal jurisdiction—that is, in so far as the safety and health to the employees are concerned.

It may seem strange to some people—and, frankly, it was strange to me when I became the Minister of Labour—to learn that while there is important federal legislation in certain fields there is no federal legislation of general application directed towards the prevention of employment accidents and the elimination of hazards in work places coming within federal jurisdiction. There is no general legislation of any kind in that respect.

There are certain industries that come within federal control such as the railways, shipping, air transport and the Harbour Board docks, in which occupational safety and the safety of the public are regulated. For instance, there are regulations that one sees posted in almost every railway car having to do with the safety of the public. Such regulations are there with the Board of Transport Commissioners keeping an eye on them in the background. But, while there are some industries that are under such control and in respect to which, in a few instances, safety is covered by some general statutes, there is this great gap which my predecessor, Mr. MacEachen, gave an assurance in the House of Commons last year would be filled by an act based on a bill such as this.

In the absence of federal controls some provincial safety regulations have been applied to federal establishments with varying successes. For instance, elevators in post offices and other public buildings are inspected by provincial inspectors.

Senator McCUTCHEON: I suggest that they are in the banks too.

Hon. Mr. NICHOLSON: That is correct; But a bank is subject to the general laws of the provinces, and even in the absence of federal legislation there is some protection in that field. A federal safety act is needed, in my opinion, and in the opinion of the Government, to clarify this situation, which, to say the least, is far from satisfactory.

I might say that the Department of Transport, the Department of National Health and Welfare, and the National Energy Board are now administering acts under which operations in certain industries are controlled and regulated, and nothing in this bill S-35 will limit or interfere with the responsibilities that the Department of Transport, the Board of Transport Commissioners, or the National Energy Board and these other organizations now have.

There is one section of the act which I hope we shall be discussing before very long, which makes it clear that the application of this particular bill will be subject to any other act of Parliament.

I might say that the Department of Transport, which has had a long experience in the field of railway administration and has also been in the picture in the case of the airlines since interprovincial and international airlines came into the picture, feels that it is qualified to do the jobs in its respective fields, and the section in the act to which I have referred is intended merely to complement the other legislation in the fields where the Government is satisfied with the agencies that are doing the job today.

Because of the very close relationship to other federal departments, and because of the close association, to which Senator McCutcheon has referred, in working with the provincial governments and other federal Government departments in the field of elevator inspection, and things like that, it is intended, if this measure becomes law, that there will be continuous consultation and exchange of ideas and experience among the various authorities.

The proposed safety legislation would have application to the operation of works undertaken and businesses within the legislative authority of Parliament, and more specifically to the same range of industries which come within the scope of the Labour Standards Code. It is complementary legislation to the Labour Standards Code that was passed last year.



The legislation would also apply to several crown companies that are engaged in service operations, in production and trade, and in commercial enterprises. I am thinking of Polymer Corporation, the company I was formerly with; Eldorado Refinery; St. Lawrence Seaway Authority; Air Canada, and the Canadian Broadcasting Corporation.

Senator McCUTCHEON: Air Canada is accepted as a novice, Mr. Minister.

Hon. Mr. NICHOLSON: Well, we may be doing some work when we move into the field. A provision is contained in the bill which will make it possible for the Department of Labour to enter into agreements with provincial authorities whereby the safety services of the provinces could be utilized in performing this field of work.

We do not want any duplication. Along with my deputy minister and other senior officials of my department, I discussed this situation in depth with the ministers of labour of Ontario, Quebec, British Columbia and Manitoba. Prior to that my deputy minister had had consultations with the other six provinces, also in depth. We invited their suggestions as to what might be incorporated in this bill. We also asked at least the four ministers of labour representing the four governments to whom I spoke, if through their workmen compensation boards, or through other provincial organizations, they would undertake inspection services in order to avoid duplication. They all agreed to cooperate fully in this field. Several of the provincial governments have sent in constructive suggestions to be incorporated in regulations that might be passed under this act.

The CHAIRMAN: In which part of the bill is this provision for consultation with the provinces, Mr. Minister?

Hon. Mr. NICHOLSON: I think sections 10, 11 and 12 are the important ones. Section 10 says:

The Minister may designate any person as a safety officer under this Act and may designate regional safety officers for the purposes of this act.

Section 11 is more particularly applicable:

The Minister may, with the approval of the Governor in Council, enter into an agreement with any province or any provincial body specifying the terms and conditions under which a person employed by that province or provincial body—

That would include a workmen's compensation board or similar organization.

—may act as a safety officer for the purposes of this Act.

Then there are further provisions for joint research and investigation into accidents, and collaboration with provincial governments and other agencies.

The CHAIRMAN: Thank you.

Hon. Mr. NICHOLSON: I may say that the majority, if not all, of the provinces have urged the enactment of this legislation by the federal Government. They feel there is a gap and they would like to see the gap filled and have assured us of their co-operation.

In the absence of this kind of legislation, there are serious questions of the extent to which federal enterprises have to submit to provincial regulations, serious questions as to whether they could move on to a dock or to an operation like Polymer, or something like that, or like Eldorado Mining and Refining, which operates here in the Province of Ontario, its Port Hope operations.

Senator McCUTCHEON: In practice, they have done this kind of thing, have they not?



Hon. Mr. NICHOLSON: Yes, they have.

Senator McCUTCHEON: They have the legal right.

Hon. Mr. NICHOLSON: Yes, they have. I might say that, according to my information, it has been amply demonstrated in Canada and in other countries that the control and the reduction of accidents in a nation which is a federation, can only be effectively carried out by concerted action and by one body that has to move in and coordinate in the broad field.

While the immediate problem is the regulation of work places, that is, regulation in accordance with the best standards, there is the longer range objectivity that has impressed me, that is, the development of consistent standards that would apply right across Canada, so that you would not have one province with legislation that is not comparable with the other.

I am sure you can see that the better provisions of all the acts—and here I refer more particularly to the acts of the Provinces of Ontario and Quebec, because they are the two largest provinces—have been incorporated into this legislation. We have invited, as I have said, the provincial governments to criticize or make suggestions for legislation before the actual bill was put in its present form.

I am very hopeful, Mr. Chairman, that with the co-operation of the provinces and the accident prevention associations, as well as the co-operation of employers and employees, we can establish a very much safer environment for workers in Canada than we have today, if this bill is accepted.

Mr. Chairman, I have here with me today Mr. Currie, who has been identified with the work on this bill for some time; and Mr. Davis of our legal staff, if you have any specific questions you would like to put, either of a general nature or on specific clauses of the bill.

Senator McCUTCHEON: I am very glad that we waited until the minister could be here and could give us the statement that he has given. He has reassured me considerably, in his reference to working with the various departments of labour and provincial bodies such as workmen's compensation bodies.

One of the matters which really concerned me about the bill was the possibility of unnecessary duplication of staff and inspection services as a result of this bill. I wonder if the minister would go so far as to say that, in addition to the very laudable objectives that he sees in the bill, another object would be to keep the federal personnel down to an absolute minimum?

Hon. Mr. NICHOLSON: To a minimum, consistent with efficient operation—I would be glad to give you that assurance. I think that, even though we are one nation in federation, conditions are different in different parts of Canada, in regard to weather conditions, for instance.

Living in balmy British Columbia, and especially in the balmy part of British Columbia, I know conditions are different, in that sense, even in one province. There are parts where you get 40 degrees below zero temperatures and where that is not uncommon. There are icy conditions and snow which affect safety, that can better be handled by provincial organizations than by a federal organization.

Senator McCUTCHEON: The minister mentioned a gap. Airlines, by and large, are being exempted, and also shipping.

As to the application of the act to banks, I think it probably may now return to the various provinces. Whether they are legally required to or not is not the point that I am trying to make. Would the minister indicate how many people are concerned and what is the extent of the gap, after we eliminate those?

Hon. Mr. NICHOLSON: Mr. Currie may wish to supplement what I have to say, as he has dealt with this point and I may ask him to reply in part.

I would not anticipate too much interference, if any, in the case of the operation of bank buildings and their other properties. Where I do share some concern—and I am pleased to see some of the representatives of the railway brotherhoods and unions here this morning—is in the legislation and the regulations we have dealing with safety on the railways. These came into being more to protect passengers on railways, people using the services, than for the employees themselves.

While there is provision for protection in the operation of the trains and the movement of freight cars, there is not the same protection in the roundhouses and in the workshops, and other areas of that kind.

Senator ROEBUCK: And the bunkhouses.

Hon. Mr. NICHOLSON: There is a distinct gap. That is one gap that I am not familiar with.

Senator McCUTCHEON: A gap that can be filled by the Minister of Transport.

Hon. Mr. NICHOLSON: It can be.

Senator HOLLETT: What is the exception in section 3(3)? It says:

(3) Notwithstanding subsections (1) and (2) ...

You will notice that, in subsections (1) and (2) in subsection (1)(b) it says:

any railway, canal, telegraph or other work or undertaking...

(c) any line of steam...

(e) any aerodrome, aircraft or line of air transportation...

These are all under the act. But then, subsection (3) says:

Notwithstanding subsections (1) and (2) and except as the Governor in Council may by order otherwise provide, nothing in this Act applies to or in respect of employment upon or in connection with the operation of ships, trains or aircraft.

I wonder why there is that exemption.

Hon. Mr. NICHOLSON: I would be glad to supplement what I have said on that score.

"Notwithstanding subsections (1) and (2)", which lists the field of federal jurisdiction. And "except as the Governor in Council may by order otherwise provide...".

Let us assume that the Department of Transport have legislation with regard to certain aspects of safety, in certain activities, and this bill comes in, and the Department of Labour moves in, in other fields; we want to assure sufficient flexibility.

This clause was worked out jointly, primarily with the Department of Transport. They were in, with their experts and legal advisers, the same as my department.

It was agreed that there should be an overriding authority, that you could not have one minister trying to assert his position in favour of another. We felt we should leave an overriding power in the cabinet and put that right in the act. That is the reason for the peculiar wording of that section.

Senator HOLLETT: In other words, the employees on trains and so on are taken care of by the Department of Transport, with similar legislation?

Hon. Mr. NICHOLSON: In some instances. But, as I have told you, the running trades, protection for the engineers and some others, is there, but there is no protection for others, but there still is a gap.

Senator HOLLETT: There is a gap there?

Hon. Mr. NICHOLSON: There is a gap there. We want to make sure that it is filled and if it is not filled up by the Department of Transport it can be filled by us, under the act.

Senator McCUTCHEON: That will leave the Cabinet free to decide?

Senator ROEBUCK: Could not that be decided now, as to where the jurisdiction lies, instead of having the buck passed from one to the other?

Hon. Mr. NICHOLSON: The Department of Labour is not free to move until we have this legislation. We think that this legislation will fill part of the gap that now exists. It may not be as wide as we think, but we want the present transport regulations to continue until the two departments have worked out, after this legislation is passed, the best way to handle the situation.

Senator ROEBUCK: Can it not be done before the bill is passed, so that we would know where we are and which department to go to for the filling of the gap?

Senator HOLLETT: Could we not eliminate subsection (3) altogether?

Hon. Mr. NICHOLSON: You would do that only with strenuous protest from the Department of Transport, who feel that they have a background of experience in this field and that there should be no modification of this, at least before full and detailed discussion with them.

Senator McCUTCHEON: I take it you were sympathetic to that view?

Hon. Mr. NICHOLSON: To which view?

Senator McCUTCHEON: That of the Department of Transport?

Hon. Mr. NICHOLSON: Yes, after detailed discussion, I was. It was after discussion that we put this section in, and I felt that, under the circumstances that now exist, this section makes sense.

Senator HOLLETT: Surely, if it comes under the Department of Transport, it does not come under the Department of Labour, under that subsection?

Hon. Mr. NICHOLSON: On the other hand, certain responsibility rests with the employers and employees here, and the employer is basically the Department of Transport. It applies in the same way in connection with the public service. The Treasury Board has certain responsibilities for working conditions in the public service; they represent the employer; they pay the bill; they are the agents of the people of Canada, and they have a responsibility by statute in this field. You have an agency of government that occupies the position of an employer, and the Department of Transport is in a somewhat similar position to the Treasury Board. I think certain working conditions must be established by the employer rather than through legislation itself.

Senator HOLLETT: Could we know what legislation there is applying to the Department of Transport and which takes care of these men?

Senator ROEBUCK: Section 270.

Hon. Mr. NICHOLSON: I will ask Mr. Currie to give you that information.

**Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Department of Labour:** The most notable is the Railway Act, section 290, which gives the Board of Transport Commissioners the power to make very extensive regulations dealing with all aspects of the operation of railways. It is particularly to be found in section 290, subsection 1, paragraph (1). It is prefaced "The Board of Transport Commissioners may make regulations—

(1)—generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains and the speed thereof, or the use of engines by the company on or in connection with the railway.



The phrase "the comfort of the public, and of the employees" would seem to cover quite wide grounds.

Senator HOLLETT: That says they may make them, but it does not say they have to be made?

Mr. CURRIE: Very extensive regulations have already been passed.

Hon. Mr. NICHOLSON: If you travel on any train you will probably find excerpts from the regulations of the transport commission posted up there.

Senator ROEBUCK: I pointed out in the Senate when this bill was under discussion there that there are tin pails of drinking water on the diesels, with a common tin cup which also forms the top of the pail on the diesels of the C.P.R. all over Canada. And later these men will be able to relate instances of the ill effects of this arrangement. I also pointed out, and this you will also get in greater detail from the men themselves later, how the Board of Railway Commissioners stated that when the men signed off at the turnaround terminals the jurisdiction of the railroad board ended because they were no longer on the trains and so they would make no provision with regard to bunkhouses.

Hon. Mr. NICHOLSON: That is one reason why we are bringing in this legislation. Speaking of the drinking water situation brings to my mind some of the discussions we have had in the last week in a matter of national importance which I think will be brought to a happy conclusion this afternoon. The same question was raised there. That was a question of health and came under the Department of National Health and Welfare rather than safety. I agree, of course, it should be there.

Senator ROEBUCK: But the department of health will not accept its responsibility. In addition to that you have three departments involved now—Labour, Transport, and Health. And they are all passing the buck from one to the other.

Hon. Mr. NICHOLSON: With this legislation we will not be able to pass the buck any longer.

Senator ROEBUCK: I hope it will be modified so that you can accept the responsibility.

Hon. Mr. NICHOLSON: One thing I have learned is that you can cover such a point by having it put into a collective agreement.

Senator ROEBUCK: I have sat on meetings dealing with collective agreements.

Hon. Mr. NICHOLSON: Of course it should not be necessary to put it into collective agreements.

Senator ROEBUCK: It should not be. We have tried to get it into railroad collective agreements for the last 20 years—unsuccessfully, I would add. What we need on the railroads is a proper regulation as contemplated in this bill where we don't leave it to the men to protest and finally bargain about something that is unsanitary to a degree, but which an inspector who looks at it can find out to be unsanitary and have it altered. He can have it corrected right on the spot. The C.N.R. has provided its diesels with a proper drinking arrangement but the C.P.R. just won't do it.

Mr. CURRIE: Mr. Chairman, I think the content of subclause 3 of clause 3, as the minister has explained, is wide enough to permit an application of the regulations if the Governor in Council so orders in the area covered by the Railroad Act, the Canada Shipping Act, and the Aeronautics Act. If the possibilities under these acts are fully explored and if some action still is not possible, then this clause would become operative and the regulations could be issued to correct the situation.



Senator ROEBUCK: The reason we—I say “we” because I have been so close to this for so many years—perhaps I should not say “we”—but it seems to put a burden on the representatives of the railroad men. After the bill is passed and a provision is made for civil servants and a great many others then, the companies—the crown companies and all the rest will take care of the situation, and I presume the department will appoint inspectors to see that everything is right. I hope after all that the railroad men will not have to go to one of other of the departments to argue their case for mere sanitation. The railroad men would like to have this thing in somebody’s hands right now, and preferably in the hands of the Labour department, because we have been trying to get it from Transport and Health for a long time. We have been seeking this for 20 years and we have not succeeded yet.

Hon. Mr. NICHOLSON: Transport feel their wide experience in this field should be and can be put to effective use. There is some jurisprudence—

Senator ROEBUCK: That is all right for the running of a railroad. They have much experience there, but the health of the men and women on our railroads is as important as it is on the road or any place else.

Hon. Mr. NICHOLSON: On the other hand there are some regulations and there is a system of jurisprudence in the Board of Transport Commissioners that they are anxious to retain but at the same time we are taking authority in this bill. This wording was carefully worked out after weeks of discussion in which we had the Department of Justice and the two other departments working on it to make sure that there was no gap, and the responsibility is now in the hands not of the Board of Transport Commissioners but in the hands of executive government.

Senator ROEBUCK: That is better. You must remember that when we had a conference of that kind, it was a contest of departments for administrative power. They are always fighting with each other—not the ministers, but the departments generally who wish to protect their own authority from encroachment by other departments.

Hon. Mr. NICHOLSON: Here there is a responsibility which would be delegated by Parliament to the Governor in Council.

Senator ISNOR: Mr. Chairman, you read a letter from the Canadian Trucking Association Incorporated this morning. The wording of the title of this bill, “An Act respecting the prevention of employment injury in federal works, undertakings and businesses.” The question arises as to whether the act applies to privately-owned air companies, steamship companies and to the C.P.R., as mentioned by Senator Roebuck. Is it an overall coverage?

Hon. Mr. NICHOLSON: If you had an air line that operated exclusively within a province, they might be able to make out a case. However, that is not a good example because the federal Government has an overriding responsibility in air. Perhaps the truckers are a better example. Yes, the truckers perhaps are the best example. We have trucks that operate exclusively within a province and we have other trucking companies—the great majority, I think, of the larger companies, who operate interprovincially and internationally, and to the extent the operations are interprovincial or international the federal Government has jurisdiction over such truckers. We had that situation in the truckers’ strike in Ontario. Two governments were involved, and we agreed on the appointment of a single conciliator. It was done jointly.

Senator HOLLETT: Why have clause 3(b), (c), (d), (e)?

Hon. Mr. NICHOLSON: If we did not have 3(b), (c), (d), (e), then it would not be possible for the Governor in Council to operate. If there were the gaps that we speak of and Transport had not moved in, it would not be possible for us to operate if we did not have them.

Senator ROEBUCK: I can quite understand shipping is another big subject, and at the moment I am not familiar with it, but you are.

Hon. Mr. NICHOLSON: Yes, to some extent.

Senator ROEBUCK: Why could not we have railroad trains put in along with (b), (c), (d), (e) and (f)—radio broadcasting stations, aerodromes and so on?

Hon. Mr. NICHOLSON: I think, with all due respect, we have. In (b) you have:

any railway, canal, telegraph or other work or undertaking—  
But you notice the limitation. This was done deliberately in subsection (3), the wording of (3). There are regulations governing the operation of trains that are now in existence. There are no safety regulations with regard to the round-houses, workshops and things of that kind. We can automatically move in without delay. The Department of Labour can move in in that situation unless the Governor in Council wanted to obstruct us. We could not do it with the running services, but we can do it, say, in the one you mentioned, the drinking cups in workshops, and so on.

Senator ROEBUCK: Could you do it on the diesels?

Hon. Mr. NICHOLSON: We can do it on any train. A diesel is still an engine; it is a train or part of a train. The diesel engine is a train, in my opinion.

Senator ROEBUCK: Well perhaps notwithstanding section 3 (3) that says it shall not apply to trains, something up further in the act would permit you to correct that?

Hon. Mr. NICHOLSON: It does, yes, in paragraph (b).

Senator ROEBUCK: Paragraph (b):

any railway, canal, telegraph or other work or undertaking connecting a province with any other—

Hon. Mr. NICHOLSON: We can take care of the roundhouse situation and train crews under 3(1) (b), if this bill is passed.

Senator McCUTCHEON: And drinking cups on diesel engines, if the Governor in Council accepts it?

Senator ROEBUCK: Yes, but can you go ahead without that special authorization of the Governor in Council?

Senator HOLLETT: Why wait for the Governor in Council to make it law?

Hon. Mr. NICHOLSON: For the reason that the Board of Transport Commissioners feel they have a broader background of experience in this field than the Department of Labour.

Senator HOLLETT: I do not agree with that.

Senator ROEBUCK: Nor do I agree with that. I do not bow down and worship the Board of Transport Commissioners.

Hon. Mr. NICHOLSON: That is the position that, after very serious consideration, my departmental officials and I were prepared to accept.

Senator McCUTCHEON: And that is the position of the Government?

Hon. Mr. NICHOLSON: Yes, that is the position of the Government.

The CHAIRMAN: May I ask another question in connection with clause 3? In clause 3(1)(i) it provides that this bill applies to:

any work, undertaking or business outside the exclusive legislative authority of provincial legislatures.

Hon. Mr. NICHOLSON: Yes.

The CHAIRMAN: That is very broad. I was thinking, say, of the pulp and paper industry, which is outside the exclusive jurisdiction of the provincial legislatures. I suppose that each province in which that business is carried on could have exclusive regulations. How would you interpret that? Suppose the province, say, of Quebec has one set of safety regulations for the pulp and paper industry and the Province of Ontario has another, could you, by an possibility, reach the point where the Province of Quebec had one set of regulations and you had another set?

Hon. Mr. NICHOLSON: I am not an expert in constitutional law. I used to have some knowledge of it some years ago, but I would rather not give a legal opinion today. But certainly the operation of that industry is normally within the jurisdiction of the province.

The CHAIRMAN: It is not within the exclusive legislative authority.

Hon. Mr. NICHOLSON: In what way would you anticipate in the field of safety, the federal Government could intervene in the operation of the pulp and paper industry?

The CHAIRMAN: You have given yourselves the right under paragraph (i).

Senator ROEBUCK: What section is that, Mr. Chairman?

The CHAIRMAN: Section 3(1)(i).

Hon. Mr. NICHOLSON: We are given the right to it in the case of any work or undertaking outside the exclusive legislative authority of the provinces.

The CHAIRMAN: That includes that industry, it seems to me.

Hon. Mr. NICHOLSON: No, because the operation of the pulp mills and safety therein are surely within the exclusive legislative responsibility of the provincial legislature. That is not a considered opinion, but—

The CHAIRMAN: What does our Law Clerk say about that?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate: I think it would take a reference to the Supreme Court to answer that question.

Hon. Mr. NICHOLSON: I know from my own association with the forest industry, both as a young man and as an older man, that these matters are deemed to come within the authority of the provincial legislatures, and not the federal. Think of some of the difficulties the Government had in bringing the federal Department of Forestry into being. It had to limit its activities virtually to research because the actual management and growing of trees and everything else is a provincial responsibility.

Senator McCUTCHEON: Research in crown lands.

Hon. Mr. NICHOLSON: Yes.

Senator ROEBUCK: I do not think there is much doubt about it that it is provincial.

Hon. Mr. NICHOLSON: Polymer Corporation, on the other hand, would be one of those. It is a federal undertaking making synthetic rubber and chemicals.

Senator HOLLETT: All crown corporations?

Hon. Mr. NICHOLSON: Yes, all crown corporations would come within this bill, other than Air Canada, the Canadian National, and certain transportation activities.

The CHAIRMAN: I think under (i) almost any industry—take the steel industry.

Hon. Mr. NICHOLSON: With all due respect, the steel industry, again, is provincial in scope and not federal.



The CHAIRMAN: But it is not within the exclusive legislative authority of the provincial legislature, and the Steel Company is carrying on business throughout Canada in various provinces.

Hon. Mr. NICHOLSON: In each case they are within the jurisdiction of the particular province. Take the Aluminum Company. The operations of the Aluminum Company in British Columbia under the Factories Act of that province come within the legislative jurisdiction of the Province of British Columbia. The Aluminum Company of Quebec comes within the legislative jurisdiction of the Province of Quebec.

Senator ROEBUCK: They may do business in various provinces, but they do not connect one province with another province, to quote the British North America Act.

Hon. Mr. NICHOLSON: That is quite correct.

Senator KINLEY: Unless they have a federal contract.

Hon. Mr. NICHOLSON: Even then you are bound by the provincial laws with regard to safety.

The LAW CLERK: It is intended to be a catch-all provision and to concede to the provinces the jurisdiction they now have, which is well recognized. I do not think the courts will have any more difficulty in interpreting this provision than they have had and will continue to have in interpreting the Canadian Constitution as a whole, and they have had great difficulty. The competing sovereignties inherent in our system present problems which require a definitive opinion from the Supreme Court, and I am not capable of providing it.

Hon. Mr. NICHOLSON: There were one or two provinces with whom we have had discussions, who insisted that such a provision be put into this act. They were not going to take any chance on the federal Government invading their jurisdiction and I think they were quite right in taking that stand. I had no hesitation in giving them that assurance.

The LAW CLERK: The difficulty is with the word "exclusive," but that is in the B.N.A. Act and we are going to have to live with that language for some considerable time, despite the competing sovereignties. I will repeat what I said before: I do not think the courts would have any more difficulty with this particular provision than they have with the Constitution as a whole.

The CHAIRMAN: The answer to my question, Mr. Minister, is that you do not intend to interfere with the present provincial rules with regard to safety in the pulp and paper industry?

Hon. Mr. NICHOLSON: That is right, and neither do we in any other business or manufacturing operation of that kind. We gave that assurance to the provinces.

The CHAIRMAN: That clears my mind, because it is a very broad principle.

Hon. Mr. NICHOLSON: In principle it is no different from those in the British North America Act, as Senator Roebuck has pointed out.

The CHAIRMAN: Are there any further questions of the minister?

Senator KINLEY: I should like to say that the penalties seem to be very severe. I am referring to clause 20. There does not seem to be any appeal.

Hon. Mr. NICHOLSON: There would be an appeal under the Summary Convictions Act.

Senator KINLEY: Would there be?

Hon. Mr. NICHOLSON: Yes, automatically, I believe. With all due respect, senator, I would not say that these penalties are severe. If anything, you might say that they are reasonable. If an employer is guilty of lack of care, and does



not live up to the provisions of the act and the regulations that are passed under it, and death results, the penalty still is imprisonment for one year, or a fine of \$5,000—

Senator ROEBUCK: Would you not always give warning? If you discovered something wrong at, say, a well and you told the employer to seal the top of the well and he refused to do it thus endangering the health of a very large number of employees, why should he not be punished?

Hon. Mr. NICHOLSON: That is right, and, I point out, this is the maximum penalty, and the magistrate has a discretion.

Senator KINLEY: The maximum is set for the person who can afford to pay. There might be many people in small businesses who are ignorant of the regulations, and the magistrate might say—well, do you say the magistrate will take all these things into consideration?

Hon. Mr. NICHOLSON: Yes, in the same manner as he would with respect to any other breach of the law. This is no different from any other federal statute in that respect, except that in the Criminal Code for offences that are not as serious as these perhaps, as serious as offences under this draft legislation often the penalties are much more severe.

Senator KINLEY: For those who can afford to pay.

Hon. Mr. NICHOLSON: Not only for those who can afford to pay.

Senator KINLEY: But a lawyer in a police court would likely tell the magistrate that in the discussion in the House of Commons on this bill it was disclosed that this was the maximum penalty and that the magistrate should use his judgment.

Hon. Mr. NICHOLSON: The magistrate would know that anyway, senator, with all due respect.

Senator McCUTCHEON: If he cannot afford to pay he has the option of going to jail.

Senator KINLEY: Yes, that is right.

Senator ROEBUCK: The appeal would be a trial *de novo* before a county court judge.

Hon. Mr. NICHOLSON: Yes. I think this is a very reasonable penalty. I did give serious consideration to possibility of suggesting even higher penalties.

Senator KINLEY: It is rather restricted. Clause 20 reads:

(1) An employer or any person in charge of the operation of any federal work, undertaking or business who

(c) discharges or threatens to discharge or otherwise discriminates against a person because that person

(i) has testified or is about to testify in any proceeding or inquiry had or taken under this Act, or

(ii) has given any information to the Minister—

If a foreman, for instance, does something that he does not know he should do then he is liable to the same penalty of a fine not exceeding \$5,000 or imprisonment, and in subsection (3) it is provided that he may be tried summarily.

Hon. Mr. NICHOLSON: Well, senator, I do not think you would suggest that we should pass legislation of this kind and then not protect an employee, whether he be a foreman or anyone else, who informs the minister of what he considers or thinks is an infraction of the regulations or law.

Senator KINLEY: But when you get down to working with the men who are doing the job—and I have had some experience of this—you find that they say things they do not mean, and they can make trouble. I hate to see the penalty—

Hon. Mr. NICHOLSON: That is a matter entirely within the discretion of the magistrate.

Senator KINLEY: I am glad to hear that.

The CHAIRMAN: Are there any further questions of the minister?

Senator ISNOR: Mr. Minister, you consulted various departments in regard to the provisions of this bill. I do not know what good purpose could be served by it, but I am wondering if the accident insurance companies have made any representations to you. Perhaps Mr. Currie could answer that question.

Mr. CURRIE: No representations were made, sir.

Senator ISNOR: In every airport one sees posters about taking out insurance, and so on.

Hon. Mr. NICHOLSON: Senator Isnor, in our discussions with the provincial governments—and I participated in the discussions with four provincial governments myself—we asked them to pass on any suggestions they had received from any source, and I am sure if they had received any from the insurance companies we would have got them.

Senator McCUTCHEON: If these provisions are too stringent they might put the insurance companies out of business.

Hon. Mr. NICHOLSON: Or their profits might increase.

Senator ROEBUCK: Before the minister leaves I should like to express, on behalf of myself and of everybody here, our appreciation of his attendance and the very satisfactory discussion we have had of this bill. I would like him to hear what the labour representatives have to say, but if he cannot remain then I hope his officers will.

Hon. Mr. NICHOLSON: They will, and, frankly, I would be interested to hear them for as long as I can stay I shall stay for a short while I see one or two of my friends from the railway brotherhoods here and I would like to hear their comments.

Senator ROEBUCK: Yes, and they have prepared a brief. They know what they are talking about.

Hon. Mr. NICHOLSON: I have found out that they usually do.

The CHAIRMAN: Thank you, Mr. Minister.

Hon. Mr. NICHOLSON: Thank you, gentlemen.

The CHAIRMAN: How shall we proceed with the—

Senator ROEBUCK: Let us hear from Mr. Walter and Mr. McGregor now, while the minister is here.

The CHAIRMAN: Mr. Spector has a question he wanted to ask the minister.

Mr. SPECTOR: Yes, if I may be permitted, Mr. Chairman.

The CHAIRMAN: You are representing the Canadian Co-ordinating Committee of the Teamsters of Canada?

Mr. SPECTOR: That is right, and Mr. K. McDougall is with me. I am the attorney, and Mr. McDougall is on the executive committee. In order to clarify this so that there will be no confusion in the future I will say, while the hon. the minister is here, that we take it for granted that trucking is included in the bill.

Hon. Mr. NICHOLSON: To the extent that the operations are interprovincial or international, that is correct.

Mr. SPECTOR: In order that there be no confusion in the future in respect to some lawyer taking a case to the Supreme Court and arguing that the act does

not include trucking, may I be permitted to suggest that clause 3(1) on page 2 be amended by inserting after paragraph (b) as paragraph (c) the words:

any land transport operation connecting a province with any other or others of the provinces, or extending beyond the limits of a province.

That is in conformity with the wording that is found in paragraph (c) which reads:

any line of steam or other ships connecting a province with any other or others of the provinces, or extending beyond the limits of a province.

My suggestion is that you have a specific paragraph covering any land transport operation.

Hon. Mr. NICHOLSON: Between provinces?

Mr. SPECTOR: Yes, or extending beyond the limits of a province. It would then apply to a land transport operation between Canada and any part of the United States.

Senator ROEBUCK: Why not insert those words in paragraph (b) after the word "railway"? If you insert "transport" after the word railway", you would have it, would you not?

Mr. SPECTOR: We could have it so that (b) reads:

Any railway, land transport operation, canal, telegraph or other work or undertaking—

I will agree whichever phraseology the law officers wish.

Hon. Mr. NICHOLSON: If it is going to be inserted then I think it might be better if it were inserted as part of paragraph (b), as Senator Roebuck suggested.

Mr. SPECTOR: I thought of that as a second alternative. I have it here in my notes. I would ask that you amend paragraph (b) so that it reads:

Any railway, land transport operation, canal, telegraph or other work or undertaking—

Is that in accordance with the legal opinion?

Mr. DAVIS: Are you asking us to agree right now? You are before a committee of the Senate.

Mr. SPECTOR: This is my suggestion to the committee.

The CHAIRMAN: Are there any other suggestions?

Mr. SPECTOR: Yes, sir.

Senator ROEBUCK: Would you give me that phrase again?

Mr. SPECTOR: I suggest that paragraph (b) read:

any land transport operation connecting a province with any other—

Senator ROEBUCK: That is in there already. What you are suggesting is that after the word "railway" in paragraph (b) there be inserted the words "land transport operation"?

Mr. SPECTOR: That is correct.

The next thing, Mr. Chairman, is with respect to clause 7 on page 3. In the seventh line we have the words "plants, machinery, equipment" et cetera. I suggest that after the word "equipment" there should be inserted the word "vehicles".

The CHAIRMAN: Would you give us the line? Is it not line 37 to which you are referring?



Mr. SPECTOR: In section 7(1) on the seventh line, after the word "equipment" insert the word "vehicles". After subparagraph (i), may we be permitted to suggest that we insert the following subparagraphs. This would then read:

(j) respecting the mechanical safety of any vehicles and equipment used in any land transport operation or undertaking.

And the next subparagraph should read:

(k) respecting working conditions in so far as they affect the safety of the public in general and employees in particular.

Senator HOLLETT: Why "in particular"?

Mr. SPECTOR: It is only a suggestion.

Senator HOLLETT: Is not the word "employees" sufficient?

Mr. SPECTOR: What we have in mind, senator, is this: A recognized trucking firm will have employees who will fall under the Labour Standards Code. Perhaps they have a business where they want a 40-hour work week, and the east coast wants less than that. That will be decided by the Department of Labour. There may be a situation where it is known that an independent trucker is not affiliated with any company, who owns his own truck. It was known in a certain specific case that a trucker entered his truck in Halifax and drove 11 days and 11 nights to Vancouver. He took bendrene pills, and ended up by killing people on the highway. We feel the public should be protected against any act of that nature in the future, and we have authority to enact this legislation. That was why we spoke of "public in general" and "employees in particular".

Later when we come to the regulations stage, we will suggest to the honourable minister a provision to govern the following situation. It is well known in the trucking industry that where there is something wrong mechanically with the truck, the employee returns to his company and finds that his pay is gone and he has lost his job. He is afraid to report to certain companies and keeps on driving that truck until he kills himself or somebody else. That is something we wish to avoid and which we shall stress when we come to the regulations, and I thought if we had the verbiage "public in general" and "employees in particular" it would be something worthy of consideration.

Senator HOLLETT: You explained it very well.

Senator ROEBUCK: The trouble with your phraseology is that "public in general" does not mean a specific person in the public.

Mr. SPECTOR: I do not follow that.

Senator ROEBUCK: That is an interpretation which a court may very well apply today. You are better off without your adjectives and by simply leaving it as "public" and "employees".

Mr. SPECTOR: All right.

The CHAIRMAN: Have you other suggestions?

Mr. SPECTOR: Yes.

The CHAIRMAN: With respect to all these suggestions Mr. Spector is making, I do not think it is fair to expect the department to accept or reject them right away. I think if he proposes them, and then Mr. Davis, the Departmental Solicitor, looks at them and later states to what extent he approves of them, it would be better. In the meantime, go ahead with any other suggestions.

Mr. SPECTOR: The last would be to correct section 17 by inserting the word "vehicle". Having already inserted the word "vehicle" in section 7, it would be necessary to include the word "vehicle" wherever else it occurs. For example, in section 17 the word "vehicle" should be included throughout.



The Law CLERK: I suggest that the word "thing" in the second line of section 17(1) should include the word "vehicle".

Mr. SPECTOR: With due respect, some courts have not been very clear about it. I practiced law for 35 years, and I felt it advisable to put the word "vehicle" in here to avoid misunderstanding. It is only a suggestion from experience.

Senator ROEBUCK: And you are right on the principle of *ejusdem generis*. You cannot read "vehicle" into that clause.

Senator LANG: Respecting your first suggestion of "land transport operation," that is a broad term. Could you not use the word "vehicle or truck"?

Mr. SPECTOR: We could. However, we used the words "land transport" instead of "vehicle," because you can have a piggy-back sometimes and a trailer.

Hon. Mr. NICHOLSON: If it comes within the scope of the Labour Standards Code the intention is to see that it comes within the scope of this act.

Mr. SPECTOR: Of course, these are only suggestions.

The CHAIRMAN: I suggest that the department be given an opportunity to consider them.

Mr. SPECTOR: Thank you very much for permitting me to make these suggestions.

Senator KINLEY: I think that an earlier suggested amendment of yours was to include the words "any method of transportation". That seems to me to be pretty comprehensive.

Mr. SPECTOR: "Any land transport operation or undertaking". A bicycle, for instance, would not connect from one province to another.

Senator KINLEY: It could ride into the other province.

Mr. SPECTOR: It may be that you should suggest that the bicycle have both front and rear lights, and a bell.

Senator KINLEY: I do not want you truckers to have an advantage over the little independent man who does trucking.

Mr. SPECTOR: We have no desire to do so.

Senator KINLEY: I am afraid you are looking after the interests of your truckers.

Mr. SPECTOR: We have no desire to have an advantage over anybody else. Our motive here and my attendance here this morning is because we believe in and are deeply appreciative of this proposed legislation. We want to make sure that it covers the trucking industry. I would not want you or anybody else to think for one minute that there is any selfish interest we are serving here. We have no intention to drive out the independent trucker unless he does harm to the public. We are interested in the public, and that is why I am here this morning.

Senator KINLEY: I have had some experience and I am sure that your truckers do as many other truckers do, travel all night, eat a little lunch in the truck, and they are liable to be a menace on the road because of what is expected of them. This is true of all truckers. The little fellow should also be protected.

Mr. SPECTOR: We would like that to be so. Mr. Huneault is one of the executive members, and he is fully familiar with that aspect of it. But I know they would like to drive more than 40 hours a week. Today with the new labour code they cannot do so in certain sections of the country. Am I correct, Mr. Minister? This is one of the big headaches. We want the rank and file to get a good salary, and we feel that 40 hours a week is enough.

Senator KINLEY: Has that part in the Labour Standards Code with regard to truckers been invoked yet? It was said there would be some difficulty for them to apply it.

Hon. Mr. NICHOLSON: Well, let us take care of the other legislation that has been passed.

Senator KINLEY: But has it been put before us?

Hon. Mr. NICHOLSON: It is one of the factors that the minister should consider in deciding the extent to which permits will be given to trucking companies to operate beyond the 40-hour period.

Mr. DAVIS: It seems to me that what this gentleman is proposing in section 3 (1) is against all the legislation we have had for years. These are the things we have covered. We borrowed this wording from the B.N.A. Act.

The CHAIRMAN: I rather favour using the wording "land transport operation" in paragraph (b), because that would include pipe lines, which you want to include.

Tomorrow we have to deal with a bill which proposes to incorporate a pipe line to send solids from one province to another.

Hon. Mr. NICHOLSON: I should like to make just an observation. I am sure that if the Canadian Trucking Associations Incorporated or any other organization have any ideas, we would welcome them, if they are constructive. We try also to co-operate with the advisers of your committee, to incorporate amendments in the bill. I would like to point out, however, that the object of this bill, which is sponsored by the Minister of Labour, is to prevent injury to employees. It is not the general public, for whom safety legislation is provided by the Criminal Code of something like that. We are here to protect the employees. That is the purpose of this legislation.

Senator McCUTCHEON: Interprovincial trucking is covered by this legislation, without adding any words.

Hon. Mr. NICHOLSON: We think it is, but if there is any doubt about it we would be glad to consider the suggestion.

Mr. SPECTOR: If I were to have said at the beginning that all we are doing is appearing here this morning just merely to protect the truckers, I would not have been rendering full service as a Canadian. We are interested in protecting the public in general and the truckers in particular. That is what I even suggested as one of my amendments. I repeat that. If you have other legislation to protect the public, we are then interested in protecting the employees and the truck drivers.

Hon. Mr. NICHOLSON: That is the purpose of this legislation, protection of employees.

Mr. SPECTOR: I may say, Mr. Chairman, in so far as the legal counsel of the department is concerned, I might refer him to the Privy Council decision in *Attorney General for Ontario v. Winner*, where it was decided that trucking comes under federal jurisdiction.

Mr. DAVIS: That is what I was trying to indicate. This legal decision is being attacked now before the Supreme Court, on appeal from the Attorney General of the Province of Manitoba. Consequently, I did not want there to be any confusion in the future.

Senator ISNOR: Mr. Chairman, have you put on record whom this witness is representing?

Mr. SPECTOR: The Canadian Co-ordinating Committee of Teamsters for Canada.

The CHAIRMAN: What relation has that to the Canadian Trucking Associations?

Mr. SPECTOR: None whatsoever. The Canadian Trucking Associations are owners. We are the employees.

Senator ISNOR: We have been talking all along about the trucking firm.

Mr. SPECTOR: It has reached the situation where the employees are concerned with the carrying on of the undertaking, even if we do not own it.

Senator ROEBUCK: That is New Brunswick?

Mr. SPECTOR: Yes.

The CHAIRMAN: We have another brief, from the Canadian Railway Labour Executives' Association. Would you like to hear that now? We will have at least one more meeting but these gentlemen are here and I should not like to disappoint them.

Senator ROEBUCK: What about the other people that I mentioned? Is there not some priority in that suggestion, at all events? Mr. McGregor and Mr. Walter are here and what they have to say deals exactly with what we have been discussing. I do not know what the other gentlemen are going to bring forward.

The CHAIRMAN: These are the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen?

Senator ROEBUCK: Yes. It is with regard to these diesels and bunkhouses. It is right along what we have been discussing. While the minister is here, I would like to hear from these witnesses on this point.

The CHAIRMAN: Does the committee wish to hear from Mr. Walter and Mr. McGregor? I understand now that there is only one brief and that Mr. McGregor will present it. Does the committee wish to hear him?

Hon. SENATORS: Agreed.

**Mr. W. G. McGregor, Canadian Representative, Brotherhood of Railroad Trainmen:** Mr. Chairman, honourable senators, Mr. Minister: On behalf of my colleagues in the Brotherhood of Railroad Trainmen, and on behalf of the Canadian Railway Labour Executives' Association, I wish to present this brief. First, I should like to point out that the railway workers are interested in safety on the job as well as off the job, even in so far as children's playgrounds are concerned. Safety is everybody's business.

We appreciate, Mr. Minister, the opportunity we have had of having heard your explanation of the bill. With permission I will now present the brief.

Honourable senators, on behalf of the Canadian Railway Labour Executives' Association, an Association which represents practically all railway employees in Canada, we wish to express our appreciation for the opportunity to appear before your committee for the purpose of setting out our views relative to the subject matter of Bill S-35, an act respecting the prevention of employment injury in federal works, undertakings and businesses.

We are of the opinion that the bill is intended to close gaps in existing legislation in so far as safety is concerned, and in this respect we endorse the intent and the comprehensive coverage contained in it.

However, there is one aspect of the bill that gives us cause for concern, and that aspect concerns itself with what may be best termed, health and sanitation of railway employees.

It is necessary to review our efforts to obtain reasonable sanitation standards for railway workers in Canada.



In August, 1909, the Brotherhood of Locomotive Engineers made application to the Railway Commission for "suitable quarters for firemen and engineers at divisional and terminal points", which case was heard by the commission on November 4, 1910.

The judgment contained in Canadian Railway Cases, Volume XI, 1911, pages 336-37-38, stated in part:

When the engineer and fireman arrive at a divisional point and turn their engine over to the proper custodian, they are then "off duty". The railway company is under no obligation to house them than it is to feed them. Section 30 of the Railway Act gives the Board authority to make orders and regulations requiring proper shelter to be provided for all railway employees "on duty". When these men are in at divisional points they are not "on duty". The whole matter must be left to the good judgment of those in charge of the operation of railways.

Our records indicate that representation was made to the Departments of Health and Welfare at both the federal and provincial level, in an effort to determine who had jurisdiction in the matter.

On April 30, 1949, the following letter was received from the Minister of National Health and Welfare, at that time, the Honourable Paul Martin:

Mr. J. B. Ward,  
Assistant Grand Chief Engineer,  
Brotherhood of Locomotive Engineers,  
502-3 Plaza Building,  
Ottawa, Ontario, Canada.

Dear Mr. Ward:—

Last year we had correspondence regarding the authority of Provinces to direct Federal chartered railways to comply with Provincial regulation regarding health and sanitation located on the property of such railways.

On August 18, 1948, I wrote to you expressing regret that I was unable to give you a final answer.

We have since been advised that this Department has authority with regard to health and sanitation in buildings on the property of international or interprovincial railway companies. However, the Provinces have also a right to require cleanliness on such properties if a public nuisance exists as a result of failure to maintain them in satisfactory condition.

I hope that this information answers the questions which you had in mind.

Yours sincerely,  
(Sgd.) Paul Martin.

In 1951, the Department of National Health and Welfare issued a set of bunkroom standards entitled "Railway Sanitation—Sanitary Requirements for Bunkrooms".

Improvements were obtained in many cases of alleged unsanitary bunkrooms by referring such cases to the Department of National Health and Welfare.

However, the standards referred to did not have regulatory authority and therefore could not be enforced.

With the advent of diesel power on Canadian railways, our records show that representation was made to the Board of Transport Commissioners in 1955



and 1956, requesting that the board, under the authority of section 290 of the Railway Act, issue a general order that would require the installation and maintenance of toilets on diesel locomotives.

The board advised that in its opinion it did not have jurisdiction over a matter of this kind.

On May 1, 1958, we presented a brief to the federal cabinet and among other matters we dealt with health and sanitation, railway employees. Since that date in our annual submissions to the Government we have urged that the Government provide for the health and comfort of railway employees by requiring that toilet facilities be provided and maintained in a sanitary condition for towermen, crossing watchmen, enginemen on all types of Diesel locomotives, all yard service employees, trainmen when occupying cabooses, and in all boarding cars, railway shops and resthouses at terminals. Further, that drinking water facilities, sleeping accommodation and eating facilities be provided and maintained in a sanitary condition.

On February 19, 1963, the then Minister of National Health and Welfare, the Honourable J. Waldo Monteith, sent us a draft copy of a national sanitary code applicable to railways. After a series of meetings with officials of the department, which extended into 1965, we were given copies on June 1, 1966, of the approved Sanitary Code.

The covering letter, over the signature of Mr. W. R. Edmonds, Chief, Public Health Engineering Division, Department of National Health and Welfare, advised that the code had been developed after consultation with provincial health authorities, the Railway Association of Canada, the Railway Brotherhoods and other interested agencies. He goes on to say that he trusts that we will find it acceptable and that these "guide-lines" will be implemented to the fullest extent possible.

In other words, the department has put a great deal of time and effort into the preparation of a Sanitary Code, that is very comprehensive, was produced by authority of the Minister, the Honourable Allan J. MacEachen, but is without regulatory authority, and is for use only as guide-lines.

We have repeatedly expressed the view that guide-lines as such will serve no useful purpose. Rather, there must be regulatory authority covering such matters.

On May 24, 1966, Bill S-35 was introduced in the Senate and we respectfully refer you to two particular parts of the bill, having in mind that Section 3(1)(b) brings railways under federal jurisdiction, within the jurisdiction of the bill.

Section 7(d) Regulations—stipulates that regulations may be made—"respecting the provision and maintenance of potable water supplies and of sanitary and other facilities for the well-being of employees".

However, Section 3(3) of the act reads,—“Notwithstanding subsections (1) and (2) and except as the Governor-in-Council may by order otherwise provide, nothing in this act applies to or in respect of employment upon or in connection with the operation of ships, trains or aircraft.”

We understand that those who drafted the bill are of the opinion that health and sanitation, as it applies to railway employees comes under the jurisdiction of the Department of Transport, (The Board of Transport Commissioners for Canada). However, as we have pointed out, the Department of National Health and Welfare has advised us that it has jurisdiction, but evidently the department will not go beyond establishing guide-lines. Now we find that Bill S-35 claims jurisdiction in this matter, comes under the Minister of Labour. However, the bill qualifies the jurisdiction by excluding the operation of trains unless otherwise provided by order of the Governor-in-Council.

We are compelled to observe that in a matter of such importance as health and sanitation, it is inconceivable that such confusion should prevail, while railway employees are, in all due respect, treated as less deserving of being assured reasonable standards than is afforded other citizens of Canada.

We respectfully request that you amend Bill S-35 in such a manner so as to provide by law sanitary standards for railway employees.

If I might, Mr. Chairman, I would like to make one short remark. In so far as the discussion this morning dealt with the matter of safety, our brief has tried to point out the problem of sanitation. However I would like to quote an extract from a speech made by Mr. R. M. MacDonald, Director of Operations, Board of Transport Commissioners, when he addressed the joint meeting of the Air Brake Association in Chicago, Illinois, September 15, 1958. It deals first of all with regulations, and I quote:

The public safety in operation of railway is a primary concern of the Board. It is authorized to make orders and regulations touching on virtually every aspect of railway operation. There are many sections of the Canadian Railway Act which cover these general powers. Possibly the most comprehensive is section 290. This section authorizes the Board, among other things, to make Orders and Regulations:

- 1 Limiting the rate of speed at which railway trains are to be operated in any City, Town or Village.
- 2 Limiting the use of the statutory warning signal within urban municipalities.
- 3 Requiring proper shelter to be provided for railway employees on duty.
- 4 Prescribing the use of fire prevention appliances.
- 5 Limiting the length of sections.
- 6 Designating the number of men to be employed upon trains.
- 7 Regulating the hours of duty of employees involved in train operation.
- 8 Providing that a specified kind of fuel or a specified kind of power or method of propulsion shall be used on locomotives, and,
- 9 Generally providing for the protection of property and the protection, safety, accommodation and comfort of the public and of railway employees.

It is significant, however, that no general regulations have been adopted with respect to several of these requirements. For instance, there are no general regulations limiting the rate of speed of trains, providing shelter for railway employees, limiting the length of sections, designating the consist of crews and neither has a Canadian Hours of Service regulation been adopted.

The Board of Transport Commissioners on safety applies rule General 102, now General 010, applying to safety appliances on rolling stock, but as far as regulations for sanitation are concerned there has been no general order issued to my understanding and knowledge.

Senator BOURGET: In your brief you mentioned a sanitary standard. Have you a specific request to make as to how the bill should be amended?

Mr. MCGREGOR: No, senator, we left this to those who are more capable of drafting legal language.

Senator ROEBUCK: You are asking that the railroad employees be brought under this bill like all the rest.

Mr. MCGREGOR: For sanitation and safety purposes.

Senator LANG: Have the railroads disregarded it, or could you not request this under collective bargaining?

Mr. MCGREGOR: This has been a matter of collective bargaining over a period of years. There have been some improvements, but we have been unsuccessful in having these sanitary facilities provided through collective bargaining procedures. As mentioned in the brief it has been presented to the cabinet and the Government on various occasions over many, many years.

The CHAIRMAN: Are there any further questions?

Mr. MCGREGOR: My colleagues, Mr. Gibbons and Mr. Walter, are here, if there are any matters they could assist with in answering any questions.

The CHAIRMAN: Do you have anything further to add to what Mr. McGregor has said, Mr. Gibbons or Mr. Walter?

Mr. WALTER: I think, Mr. Chairman, that Mr. McGregor has covered our observations on the bill fully.

Mr. Arthur Gibbons, Brotherhood of Locomotive Firemen and Enginemen: If I may, Mr. Chairman, I would like to refer to the Sanitary Code which is indeed comprehensive. There are some 108 pages, but they do not have regulatory authority. They merely serve as guidelines.

I think in order to point out what our main concern is with respect to the necessity of regulatory authority in the field of health and sanitation, if I may read you a letter arising out of drinking water facilities on the Canadian Pacific Railway on diesel locomotives that Senator Roebuck referred to, it will present an example of the problem.

An incident has arisen here in the London Division that shows the necessity of more sanitary drinking water facilities on our diesels.

In December, Brother O. L. Maxwell underwent a medical examination, and it was found he had an advanced case of tuberculosis. He has been hospitalized, under strict isolation, and has been given only a 50-50 chance of recovery.

The Board of Health Authorities have directed all employees who have had any contact with Brother Maxwell (and it could not be any closer than using the same water pail) to have X-Rays and skin tests made for their own protection. This involves the majority of the running trades here in London, as well as those using the bunkhouses in Windsor. Having electric water coolers and using paper cups would certainly minimize anyone's chances of infection, and considering the circumstances mentioned above it seems most necessary.

As we pointed out in the brief, we have for years brought such matters to the attention of the Department of National Health and Welfare because they told us in 1948 they had jurisdiction in this field. I then took it up with Mr. Edmonds, who is Chief of the Public Health Engineering Division of the Department of National Health and Welfare. I wrote to him in February and sent a tracer later on, and on May 31 I received this letter:

I have for acknowledgment your letter of May 27 concerning the alleged use of a common drinking receptacle in an instance where an employee, after a medical examination, was reported to be in an advanced stage of tuberculosis. The use of a common drinking receptacle is contrary to the requirements under several sections of the Sanitary Code.

For example, on Page 108 under the section "Water Supply Facilities on Diesel Engines", it states: "Where water coolers are used for storage of drinking water, they shall be maintained in a sanitary condition at all



times and shall be so designed and constructed that the water cooled for drinking purposes shall be chilled in such a manner that the ice or refrigerant cannot come in contact with the water.

The cooler shall have a tight fitting cover and a tap dispenser which is protected against outside contamination.

A supply of single service cups shall be available at all water coolers or chilled water faucets.

The use of a common drinking cup shall be prohibited."

This incident certainly emphasizes the need for the company to provide adequate and safe drinking water facilities where potable water is made available for employees on railway property. There are other reasons which make the use of common drinking cups an unsafe practice from a public health viewpoint.

We intend to bring this matter to the attention of the Chief of Medical Services for the Canadian Pacific Railways and to ascertain what action he proposes to take to comply with our request to rectify this lack of compliance with the Sanitary Code.

But, as we pointed out, we are on our hands and knees begging somebody to give us relief from unsanitary conditions. The question has been asked why we could not obtain them through collective bargaining. Several agreements contain provisions for bunkhouses, but how do you legislate health and sanitation standards in bunkhouses for toilets and drinking water through collective agreements? I say this can only be done through legislation. We find ourselves in this difficult position of having another minister, with all due respect, to try and seek satisfaction from as to our most undesirable conditions that could possibly prevail in this day and age, in all due respect.

We have many other examples of bunkhouse conditions. The CPR locomotive leaving Montreal in passenger service goes right through to Vancouver. There are no toilet facilities and no cleansing of the common bucket, and the receptacle is very small with a lid on and a handle, and that is the common drinking receptacle.

Senator ROEBUCK: Is there a toilet?

Mr. GIBBONS: There is no toilet on any of these diesels. Well, I should not say this. There are some experimental ones on some. But we say, with all due respect, the time has come when one more department should not have authority to make regulations, but we want somebody to accept the responsibility and make the regulations that would govern this.

Hon. Mr. NICHOLSON: You are not suggesting, I am sure, Mr. Gibbons, that the bill that is now before this committee of the Senate, which has to do with safety in employment, is not a proper responsibility of the Department of Labour. The bill which is now before the Senate deals mainly with employment injuries. That is the purpose of this bill. Are you suggesting that that responsibility should be in the hands of another department of Government?

Mr. GIBBONS: No, we are very specifically making this point in our brief. I think it is No. 7, section 7(d) which refers specifically to potable water supplies and sanitary and other facilities for the well-being of employees. But on that subject the Board of Transport Commissioners, as has been pointed out by Brother McGregor, have not accepted responsibility. We have documentary proof they do not think the obligation of having toilets on diesel locomotives comes under their jurisdiction. They say, "We have no jurisdiction whatever over the bunkhouses because the employee is off duty." So where does the authority lie?

We went to the Department of National Health and Welfare on the particular matter of health and sanitation. They assumed authority and so told



us they had after consultation with the provincial governments. Then they went ahead and prepared a very comprehensive sanitary code of recommended requirements for common carriers, construction camps and eating establishments under the federal jurisdiction; but it has no regulatory authority and is not worth the paper it is written on, unless the employer can be compelled to comply with these standards.

Bill S-35, as it applies to these two specific points, gives the Governor in Council the authority to make regulations. We do not think that is essential. We want regulations stipulated.

Senator ROEBUCK: You want that authority in the hands of the Department of Labour under this bill?

Mr. GIBBONS: If it is the decision of the Government that such a matter comes under the Department of Labour, we say: Don't just wait for the permission of the Governor in Council. Make it law and include it, so it is a law on those two aspects. When we talk of safety in general we are discussing a very complex field, and I am sure Mr. Curry is familiar with this. For instance, under Workmen's Compensation, although we work under national carriers on the Canadian National and Canadian Pacific, we come under the Compensation Acts of the respective provinces wherein we reside, so the Department of Transport has nothing to do with that. Those who drafted the bill—and I think the minister referred to consultation with the Department of Transport—assume a great deal of authority. We say, with all due respect, if they have it, they have never accepted it.

The CHAIRMAN: I think we should have the views of the Department of Transport on that point. Mr. Fortier is here and it is five minutes past one, and we will have to have one or more further meetings. Unless there are any further questions to ask these witnesses, I think perhaps we should adjourn and ask Mr. Fortier, perhaps at our next meeting, to give us his views, first of all, on the jurisdiction of his department with respect to these health and sanitary matters and, secondly, why have they not carried them out.

Is there anyone else here who wishes to make representations who would not be available again? Shall we adjourn at the pleasure of the Chair?

Senator ROEBUCK: Can we not set a time for our reassembly?

The CHAIRMAN: That is what I was asking. Is there anybody here who wishes to make representations today?

Senator ROEBUCK: We have not the time now, but cannot we settle when we shall reassemble so that anybody here will know when to come?

The CHAIRMAN: The only thing I am thinking of is the brief we are going to receive from the Canadian Labour Congress.

Hon. Mr. NICHOLSON: Is that on this particular bill, Mr. Chairman?

The CHAIRMAN: Yes, Mr. Jodoin has said that the Canadian Labour Congress wishes to make representations. Does the committee wish to settle the time of the next meeting?

Senator LANG: I would suggest that it be at the call of the Chair, Mr. Chairman.

Hon. SENATORS: Agreed.

Senator KINLEY: I point out, Mr. Chairman, that there is a committee meeting at 2 o'clock.

The CHAIRMAN: Yes, the Standing Committee on Banking and Commerce has a meeting at 2 o'clock. The meeting is adjourned to the call of the Chair.

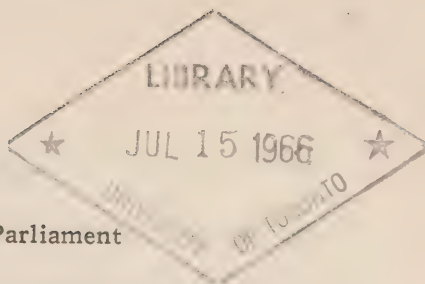
The committee adjourned.











First Session—Twenty-seventh Parliament

1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable A. K. HUGESSEN, *Chairman*

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No. 7

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Complete Proceedings on the Bill S-36, intituled: "An Act to  
incorporate Commercial Solids Pipe Line Company"

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THURSDAY, JUNE 16, 1966

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WITNESSES:

Mr. J. J. Urie, Q.C., Counsel and Parliamentary Agent; Mr. R. P. Ritchie,  
Vice-President, Transportation and Supplies, Shell Canada Ltd.; Mr.  
F. H. J. Lamar, Counsel, National Energy Board.

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REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Adrian K. Hugessen, *Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*).  
(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 31st, 1966:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill S-36, intituled: "An Act to incorporate Commercial Solids Pipe Line Company", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, June 16th, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-36, intituled: "An Act to incorporate Commercial Solids Pipe Line Company", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

THURSDAY, June 16, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-36, intituled: "An Act to incorporate Commercial Solids Pipe Line Company", has in obedience to the order of reference of May 31st, 1966, examined the said Bill and now reports the same with the following amendment:

*Page 3:* Strike out clause 7 and substitute the following:

"7. The provisions of subsections (7), (8), (9), (10), (10a), (11), (12) and (13) of section 12, and subsection (2) of section 14, and sections 15 and 19, and subsection (1) of section 20, and subsection (2) of section 22, and sections 35, 36, 37, 39, 40, 62, 63, 64, 65, 83(3), 84, 87, 91 and 94 and paragraphs (a) and (b) of subsection (1) of section 103, section 105, and subsection 6 of section 108, and sections 110, 130, 134, 135, 136 and 137 of Part I of the *Canada Corporations Act* apply to the Company: Provided that wherever in the said sections and subsections the words "letters patent" or "supplementary letters patent" appear, the words "Special Act" shall be substituted therefor."

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*



## MINUTES OF PROCEEDINGS

THURSDAY, June 16, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aseltine, Bourget, Connolly (*Halifax North*), Croll, Fournier (*Madawaska-Restigouche*), Gershaw, Haig, Hollett, Lang, McCutcheon, McElman, McLean and Pearson.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

Bill S-36, "An Act to incorporate Commercial Solids Pipe Line Company", was read and considered.

On motion of the Hon. Senator Croll it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

Mr. J. J. Urie, Q.C., Counsel and Parliamentary Agent.

Mr. R. P. Ritchie, Vice-President, Transportation and Supplies, Shell Canada Ltd.

Mr. F. H. J. Lamar, Counsel, National Energy Board.

On motion of the Hon. Senator Croll it was resolved to report the Bill with the following amendment:

*Page 3:* Strike out clause 7 and substitute the following:

"7. The provisions of subsections (7), (8), (9), (10), (10a), (11), (12) and (13) of section 12, and subsection (2) of section 14, and sections 15 and 19, and subsection (1) of section 20, and subsection (2) of section 22, and sections 35, 36, 37, 39, 40, 62, 63, 64, 65, 83(3), 84, 87, 91 and 94, and paragraphs (a) and (b) of subsection (1) of section 103, section 105, and subsection (6) of section 108, and sections 110, 130, 134, 135, 136 and 137 of Part I of the *Canada Corporations Act* apply to the Company: Provided that wherever in the said sections and subsections the words "letters patent" or "supplementary letters patent" appear, the words "Special Act" shall be substituted therefor."

At 11 a.m. the Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,  
*Assistant Chief Clerk of Committees.*



# THE SENATE

## THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

### EVIDENCE

OTTAWA, Thursday, June 16, 1966.

The Standing Committee on Transport and Communications, to which was referred Bill S-36, to incorporate Commercial Solids Pipe Line Company, met this day at 10 a.m. to give consideration to the bill.

Senator A. K. Hugessen in the Chair.

The CHAIRMAN: Honourable senators, it is 10.00 o'clock and I see a quorum. We have to consider this morning Bill S-36, an act to incorporate Commercial Solids Pipe Line Company. This is rather an unusual bill and I think we should have the usual recommendation for preparation and printing of our proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: I have a report from our Law Clerk and Parliamentary Counsel, addressed to myself, stating:

In my opinion this bill is in proper legal form and I have no suggestions to offer for its amendment.

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** Mr. Chairman, that statement is subject to one amendment to be proposed.

The CHAIRMAN: Apparently, there is one amendment to be made later on to one of the sections. That will be explained when we come to it.

The bill was presented in the Senate by Senator A. H. McDonald, but he is not here to speak further to it.

The sponsors of the bill who are here this morning are Mr. R. P. Ritchie, Vice-President of Shell of Canada Limited; Mr. J. E. Hughes, Q.C., General Counsel for Shell Canada Limited; Mr. J. E. Mimms, Manager of Pipe Lines, Shell Canada Limited; Mr. P. J. Ritchie, Solicitor, of Shell Canada Limited, and Mr. J. J. Urie, Q.C. their counsel in Ottawa.

I understand that for the sponsors Mr. Urie proposes to lead off, if that meets with the approval of the committee.

**Mr. J. J. Urie, Q.C., Counsel, Shell Canada Limited:** Mr. Chairman and honourable senators, this is an application to incorporate a company to be known as Commercial Solids Pipe Line Company. The Bill S-36 which you have before you is in the usual form for a pipe line company. There are a number of precedents which have been enacted by Parliament, and this bill is in exactly the same form.

Senator PEARSON: How many pipe line companies are there now in Canada?

Mr. URIE: This pipe line company, I am about to say, is unique, in the sense that it is not primarily for the carriage of hydrocarbons, petroleum, natural gas,

liquid gas, and so on, but for the transportation of solids such as sulphur, potash and wood chips.

It may well be that the most convenient vehicle for the carriage of the solids through the pipe line will be a hydrocarbon petroleum oil, liquefied gas or something of that nature. It is for this reason that it is necessary to apply to Parliament for a special act to incorporate the company.

As you know, under the National Emergency Board Act, a pipe line company which makes use of hydrocarbon must obtain a certificate of convenience from the National Energy Board before it can proceed, and it must be incorporated by special act.

The four applicants are all senior executives of Shell Canada Limited, which will be the major shareholder in the company.

Just very briefly, Canada is emerging as rather a world leader in technology of solids pipe lines, which is a relevantly new development. A great deal of research has been done on it in this country. As far as we know, this is the first time that a company has been incorporated to put this research into practical use in the future.

Senator CROLL: In the United States?

Mr. URIE: In Canada.

Senator CROLL: Have there been many of these in the United States?

Mr. URIE: A few. Mr. Robert P. Ritchie, Vice President of Transportation and Supplies, Shell Canada Limited, will go into this topic in much greater detail in a few moments. From the point of view of the company and from the point of view of Canada we feel it is important that a company of this kind be started. I think it can be demonstrated that a lot of the natural resources of Canada which are at present economically inaccessible can be unlocked for development in a way which is not possible under present methods of transportation.

I wonder, Mr. Chairman, if I might call upon Mr. Ritchie now.

Senator FOURNIER (*Madawaska-Restigouche*): Can you tell us if this bill is to authorize the construction of only one pipe line or several?

Mr. URIE: At the moment, senator,—and Mr. Ritchie will go into the details—the object is to spend a considerable amount of money in research, in the neighbourhood of \$1,300,000, to determine the feasibility of a solids pipe line being used in Canada. If that research develops in the way we anticipate, the pipe line will be built. Mr. Ritchie will tell you precisely what there is in mind in that respect.

The CHAIRMAN: We usually like to know where it is proposed to start building the pipe line.

Mr. URIE: I understand that, sir.

The CHAIRMAN: Mr. Ritchie, perhaps you can answer that question?

Mr. URIE: Yes. He has a map.

The CHAIRMAN: Would you just answer the question, for the moment, Mr. Ritchie, as to where the line is to be built.

Senator Fournier (*Madawaska-Restigouche*): I want to know whether this bill includes the building of one pipe line or several. Is this for a specific line or for more than one?

The CHAIRMAN: It is in the general form of bills of this kind, Senator Fournier. It does not specify one line.

Senator FOURNIER (*Madawawka-Restigouche*): This is why I asked the question. In the case of previous bills, if I recall, there was a location from one point to another.

The CHAIRMAN: No, Senator, not in the bill. That was in the case of railways.



**Mr. R. P. Ritchie, Vice President, Shell Canada Limited:** Mr. Chairman, honourable senators, I would be very happy to answer any questions. Actually, in an effort to expedite this for you and give you some background, I have prepared a brief which you have before you. With your permission, if we could go through this brief quickly, it would answer a lot of the questions which may come up. After that, I would be very happy to answer any questions.

The CHAIRMAN: This is your brief?

Mr. RITCHIE: I have put this down so that you would have something already in hand. It gives some background and will be helpful for you.

The CHAIRMAN: Perhaps this would be the best way to proceed.

Mr. RITCHIE: Mr. Chairman and honourable senators, as Mr. Urie has just explained to you this is an application for a special act to incorporate a company devoted to the transportation of solids by pipeline.

The pipelining of solids is not a new concept. The first commercial pipeline for transportation of solids was built in England in 1914 to move coal in water from the docks to a power plant less than 2,000 feet away. Short lines to move coal mine sludge were built in the United States as early as the 1920s. A fifteen-mile line to move 500,000 tons a year of salt in a saturated brine was built in Louisiana in the 1930s. Since then there have been some longer lines, notably the 108-mile pipeline between Georgetown and Cleveland to carry coal in water. There is also a 72-mile gilsonite line between Bonanza, Utah, and Grand Junction, Colorado.

With few exceptions, most pipelines transporting solids today suspend finely ground particles in a liquid, the mixture being called a slurry. This slurry can be handled in somewhat the same way as other liquids. Another possible method is called capsule pipelining. This involves casing the solids in either rigid or flexible containers which are moved through the pipeline. In this field probably the most advanced research in the world has been carried out by the Alberta Research Council. The capsule method has not, however, yet been developed to the point where it may be used commercially for long distances. An association known as the Solids Pipe Line Research and Development Association has now been formed in Canada to further this research. Another active group is the Pulp and Paper Research Institute of Canada which has pioneered the pipelining of wood chips. The University of Saskatchewan and the Saskatchewan Research Council are working on the pipelining of potash slurries.

In summary, a number of short solids pipelines have been proven and are in operation today and many research groups and private company laboratories, both in Canada and elsewhere, are working on the technology required for pipelining a variety of commodities over long distances. It is appropriate that this effort continue and even increase and that Canada be a world leader in this technology, because no other nation has such great mineral resources located far from either tidewater or consuming markets.

There is therefore a wide potential for a company in Canada devoted to transporting solids by pipeline. We believe that, if the application is granted Commercial Solids Pipe Line Company will be instrumental in constructing in Canada solids pipelines of a much greater length and capacity than have ever been constructed anywhere else in the world.

So far I have dealt with the pipelining of solids and the objects of Commercial Solids Pipe Line Company in a general way. I now wish to describe to you *one* particular project that is being planned for the proposed company. This is the construction of a pipeline for the transportation of sulphur in slurry form from the producing plants in Alberta to the Canadian west coast.

The world demand for sulphur has increased at a rate of more than 6% annually during the past three years. In 1965, the free world produced 22.4 million tons and consumed over 23.3 million tons of this commodity. The 1970 free world production of sulphur is estimated at 31 million tons.

Concurrently with the expansion of the world markets for sulphur, the production in the Province of Alberta has increased at an enormous rate. Shell Canada Limited is the largest producer of sulphur in Canada. From the time that Shell Canada Limited started the first sulphur production from natural gas in Canada at Jumping Pound near Calgary in 1952 (producing the total output of Alberta from natural gas at that time of approximately 10 thousand tons annually) the production of sulphur in Alberta has increased to-day to more than 1½ million tons a year. Since 1952 many new plants have been constructed and others will be built in the future. It is anticipated that by 1970 the production in Alberta will have increased to approximately 3.2 million tons a year.

Sulphur is one of the earliest elements used by man. The first-known uses were medicinal. Later however, its value as an ingredient of gunpowder provided the real impetus to establish the sulphur industry. Today sulphur is used principally in the fertilizer and chemical industries but also finds use in the pulp and paper, iron and steel, rayon and film and the petroleum industries.

As sulphur has not so far been transported in solid form by pipeline on a commercial scale, research still has to be done before we can be certain that this 750 mile pipeline from Alberta to the west coast is feasible. Since to a large extent the exact location of the route will be dependent on the outcome of the research and development program which is presently taking place and which will continue after incorporation of this company no specific route can be designated at this time. Our confidence, however, can be measured by the large sums of money we have already spent, and will spend in the next two years if this Bill is passed, in developing this research to maturity.

The advantage to Canada of a pipeline that would transport this sulphur to the nearest port at a steady and economical rate is readily apparent. Such a line would be the first of its kind in the world, thus putting Canada well in the lead in the pipelining of solids.

The transportation of sulphur by rail, the present method used to convey this product from Alberta to the coast, is costly and the availability of suitable rail cars to handle this movement is a continuous problem. These costs have recently increased to the extent that Shell will pay approximately 3.1 million dollars in 1966 for transportation and handling between these points. We anticipate the industry will spend 21 million dollars in freight and handling charges for offshore movements in 1970 based on present day arrangements. It is expected that the sulphur pipeline would reduce these costs, not only to Shell but also to other Alberta producers utilizing this pipeline, by approximately one-third. The pipeline will be available on mutually acceptable terms to all producers in Alberta who can conveniently tie in with the line. For those using the line participation in the equity of the company would also be available. The resultant savings and stability of transport cost would help appreciably to improve the competitiveness of Canadian producers in supplying world markets and would aid in the negotiation of long-term contracts for sulphur sales without fear of spontaneous and non-controllable freight increases.

The sulphur pipeline project which we have under study envisages a 12-inch main line with smaller diameter feeder lines. It will likely originate near the city of Calgary, around which a gathering system would be built to tie in plants in the immediate area. The main line would go south in order to pick up throughout at Southern Alberta plants including Shell's large Waterton plant. The line would then enter the mountains at the Crowsnest Pass and go west until it reached the coast in the Vancouver area. A preliminary survey has been



made of the approximate route of the sulphur line and this is shown on this sketch which I have with me. For reasons already given, there is necessarily nothing final yet concerning the route of the pipeline.

The cost of the line is estimated at fifty million dollars, and we would expect this project to be financed as to 25 per cent by equity capital and as to the remainder by bonds, debentures or other form of borrowing. The authorized capital of Commercial Solids Pipe Line Company for which we have applied is \$100,000,000. This means that if the sulphur pipeline is built with 25 per cent equity financing, there will be ample capitalization remaining for several other solids pipelines in Canada of a like magnitude.

With regard to Shell Canada Limited, which will be the principal shareholder of the new company, I have a chart showing how it is owned. Shell Canada Limited is incorporated as a Federal Company. 17.5 per cent of the voting power is in the hands of the public, and these shares are traded on Stock Exchanges in Canada. The remaining 82.5 per cent is held by another Canadian company called Shell Investments Limited also with head office in Toronto. Shell Investments is in turn wholly-owned by a Netherlands company situated at The Hague, and finally the ownership of that company is divided as to 60 per cent in the hands of The Royal Dutch Petroleum Company at The Hague, and as to 40 per cent in the hands of The Shell Transport and Trading Company in London, England.

We are committing in excess of one million dollars to slurry pipeline studies generally, of which \$650,000 is directed to this sulphur effort. We are also confident that Canada can and should become the world leader in commercially adapting this technology to reduce overland transport costs for many other solid commodities including potash, wood chips, coal and iron ore and thus benefit our entire economy. The full weight of the technical ability of the Shell Group is behind our application and we assure you that our efforts will be unstinting in forwarding the commercial adaptation of this technology.

The CHAIRMAN: Thank you, Mr. Ritchie. Any questions?

Senator BOURGET: Where are those researches being made? In Alberta?

Mr. RITCHIE: There is research on capsule pipe lines being done in Alberta, and I referred to the Alberta Solids Pipe Line Research and Development Association which is going to put a substantial effort into capsule pipelining. This is one in which we are participating, and this is using the personnel and facilities of the Alberta Research Council. But capsule pipelining really is not what we emphasize for this line. This is a slurry line. There has been a tremendous amount of research done, and we anticipate much more. If you would like a little background on the research, I would be glad to give it to you.

Senator GERSHAW: Are you convinced that there is sufficient sulphur to justify the expenditure of so much money on a pipe line of this size?

Mr. RITCHIE: There is no question about the amount of sulphur and reserves. As a matter of fact this is the same as the oil in the tar sands. There are tremendous amounts of reserves of hydrocarbons in the tar sands, just as there are very great reserves of deposits of sulphur. There is a tremendous amount there. Disregarding that entirely, I indicated that while production is now  $1\frac{1}{2}$  million tons going up to  $3\frac{1}{2}$  million by 1970, we anticipate the export at that time will be  $1\frac{1}{2}$  million tons. This is a substantial figure, and will justify the 12-inch pipe line. On this basis our economics have been determined.

Senator BOURGET: What is the total consumption in Canada of sulphur today? Have you any figures on that?

Mr. RITCHIE: The consumption in 1965 was slightly ahead of production, and that meant that some of the stockpile had to be used up. This happened in Canada too and it was because of this that the market for sulphur improved

substantially. We are producing a total of about  $1\frac{1}{2}$  million tons and our sales are equivalent to production.

Senator BOURGET: As I understand it the pipe line will be used for carrying sulphur for export outside of Canada. I was trying to find out if our local production will meet the demands here in Canada.

Mr. RITCHIE: By 1970, when we get the volume of export up to  $1\frac{1}{2}$  million tons, our estimate of the total production in Canada will be  $3\frac{1}{2}$  million tons. The other two million tons will be for local consumption and export to the United States. The export market we talk about here is mainly for sulphur taken on board ship and exported, for example, to Japan and the Orient, Australia and other places. There is a very substantial market there. We in Canada are now No. 2 in sulphur production, but barely No. 2. The United States is ahead of us and they are the leading producer. The other two that are neck and neck, if I may use the vernacular, are Mexico and France. The production of sulphur in the United States, Mexico and France is all tidewater. We are in the situation that the freight cost of handling from Alberta is \$13 a ton. This is a hindrance to Canada's being competitive in world markets. The reason for the pipe line is to make our production of sulphur more competitive.

Senator CROLL: What do you think the cost will amount to when you get the pipe line?

Mr. RITCHIE: We think the cost will go down by one-third.

Senator CROLL: When you speak of the 12-inch pipe line, I visualize something that is 12 inches across.

Mr. RITCHIE: Twelve inches in diameter.

Senator CROLL: What is the circumference?

Mr. RITCHIE: Well, the circumference will be 3.14.

Senator HOLLETT: If we pass this bill, will we not be depriving Canadian railways of \$3.6 million?

Mr. RITCHIE: There is no question that any sulphur moved by pipe line will not be moved by rail. It is a question of being competitive for the good of Canadian industry. Whether the system is changed and another form of transport developed, you would have to determine that.

The CHAIRMAN: Let me put it another way. If we grant you this charter, then Shell Canada will have a very valuable weapon against the railways to try to get them to reduce their freight rates, will it not?

Mr. RITCHIE: Yes, you could put it that way. We think the pipe lines and the railways will not be competitive. Let me give you some of the general background of pipelining versus rail transport. Liquid pipe lines generally can move at about two mills per ton mile, and I am talking about the United States practice, and the average competitive freight rate of unit trains and competitive freight costs for the railroads is about one cent per ton mile. It is quite a difference, between two-tenths and one cent. We are not suggesting you can move slurries as cheaply as you can move plain liquids. If you double this you are in the region of having four-tenths against one cent. We have doubts that the railroads can be competitive.

Senator HOLLETT: The pipe you intend to use, will that be produced or manufactured in Canada?

Mr. RITCHIE: It should be. Our normal procedure is to buy anything in Canada that we can. Twelve-inch pipe is readily available.

Senator LANG: You mentioned in your brief the Consolidated line in Cleveland, and I believe that line is not operating now, that the railways undercut their prices.



Mr. RITCHIE: I think there is an answer to that. There was no question that the Consolidated coal pipe line was a going concern. The technology was moving and moving quite satisfactorily and at a reasonable rate. But Consolidated had more than the one movement to Cleveland. The railroads said "If you will discontinue this, we will be competitive in three different areas." They gave them such a good deal on two different movements, on which they did not have a pipe line, to be competitive, that they could not afford not to shut the pipe line down. This is not to say that on movement to Cleveland the railways would have been willing to be competitive on that alone. There are a lot of people who feel that Consolidated shut down the pipe line and there must be something wrong, but this is far from the truth.

Senator LANG: It might confer far greater benefit on other users of common carriers.

Senator GERSHAW: Could a pipe line be carried along the railway line from Alberta or from the Pacific coast?

Mr. RITCHIE: This would be possible, but the tentative route that we envisage would not be the most direct route; and the most economical would not be along the CPR. Looking at this map you will recognize Alberta and British Columbia. There are in existence seven sulphur plants in this region near Calgary. Of these seven sulphur plants, Shell has approximately 40 per cent of the production at the present time. It is envisaged that these plants will be tied up by feeder lines.

Senator PEARSON: Does COMINCO produce sulphur there?

Mr. RITCHIE: Yes, I believe so.

Senator PEARSON: Will they be transporting by rail and not through your pipe line?

Mr. RITCHIE: I would think they would. It is envisaged that these seven plants would be tied in with feeder lines to the main or branch line, and the movement would go generally as is shown here. We have done enough engineering on site to know that there is engineering feasibility of putting it on this route.

The CHAIRMAN: Are you satisfied generally as to the proposed route, and so on?

Senator FOURNIER (*Madawaska-Restigouche*): I would like you to tell us, roughly, how much per hour or per day this pipe line will move?

Mr. RITCHIE: We envisage starting by moving about 1.5 million tons. This is our assessment of the volume for export. We would anticipate that the other producers would economically come along in that pipe line. On that basis, you take 1.5 million and divide it by days or hours in the year and this will give the rate.

Senator FOURNIER (*Madawaska-Restigouche*): Is that the capacity of the pipe?

Mr. RITCHIE: No. This would be from the pumps in the initial operation. The actual capacity would be substantially more.

The CHAIRMAN: You were talking about slurry. What would you put with the stuff to make the slurry? Is it mixed with some liquid?

Mr. RITCHIE: This is part of the research that we have to determine. We know that sulphur can be moved in hydrocarbons and oil. We know that it can be moved in slurry form in water. What we are not sure of is what fluid would maximize and provide for the best medium. In addition, a good deal of the research is to determine, having satisfied ourselves on the best medium, as to the *modus operandi* of reconstituting the material at the other end.

The CHAIRMAN: Taking the water out of it.

Mr. RITCHIE: Taking it out of the water or out of the hydrocarbon, if it moves by hydrocarbons. If this is crude oil, the crude oil would not have to be contaminated with the sulphur and the sulphur would not have to be contaminated with the crude oil.

Senator CROLL: If you started out with plants in Calgary, six or seven of them, what physical requirements are necessary at the other end of the line?

Mr. RITCHIE: This is part of the reconstitution. You would have to have some kind of plant structure to take the sulphur out of the carrying medium. Then the other physical facility, of course, is the equipment to put it on board ship, because this is the way it goes overseas.

Senator PEARSON: Do they not have too much sulphur in the oil at Wainwright? Is that what causes it to be a low-grade oil?

Mr. RITCHIE: When you say "low-grade oil," senator, I presume you are talking about the price of the commodity per barrel against some other oil.

Senator PEARSON: Yes.

Mr. RITCHIE: I think that sulphur is one of the factors, also the gravity of the oil. This is a heavy oil and because it is a heavy oil it takes more refining facilities to produce the products, and because of this it has a lower value.

Senator PEARSON: Can you tell me how far advanced you have gone in using slurry and potash now?

Mr. RITCHIE: A lot of work has been done on this. We ourselves have done considerable work in the movement of potash in slurry form. We are sure that it is only a matter of time until the potash will be moved this way.

There is an area here where the railways may be more competitive on the movement of potash than of sulphur, because the big market for potash for the Saskatchewan producer at the present time is down into the mid-west and it is not just the one farmer who gets it. After it gets down there, it has to be spread around. Therefore, if you take a pipe line and move the potash to a single point, you still have to move it by rail or truck or over a vast distribution system, as against the distribution by rail from the beginning. Therefore, the rail has a bit of an edge. However I would look to the not too distant future when potash will be moved by pipe line out of Saskatchewan.

Senator McELMAN: This is a whole concept of conservation in Canada. The brief indicates that it will be a custom pipeline, I believe, in that several producers contemplate using it, at the outset, at least. This opens up competition. Would this be subject to the existing legislation on rate structure? Would the rate structure for the transportation of the product of others be within control, subject to federal statute and supervision?

The CHAIRMAN: On that subject, I am told by our counsel that there is some question as to whether the National Energy Board Act applies to the transport of solids. Senators will remember that in all these bills that we have passed over these years, it has always been under the control of the National Energy Board as to where they build the pipeline and what the conditions should be and so on. I assume that the National Energy Board has control over the rates that they charge.

I think it would be interesting to hear from Mr. Lamar, counsel for the National Energy Board, who I understand is here. I wonder whether he thinks that the National Energy Board would have the right to control this company and fix its rates, and so on.

Senator McELMAN: It is the rate structure that I am interested in.

Mr. F. H. J. Lamar, Counsel, National Energy Board: Mr. Chairman, and honourable senators, at the present time—and I emphasize the word "present"—the national Energy Board Act does not encompass pipe lines whose main

function is to transport general commodities other than gas or oil. We do have jurisdiction over the rates of the pipe lines which we do regulate, namely, oil and gas pipe lines. If the National Energy Board were to assert control or regulatory authority over solids or commodity pipe lines, this would include control over the transmission rates charged by them.

The CHAIRMAN: And over who would have the right to use the pipe line, and so on?

Mr. LAMAR: Yes.

Senator McCutcheon: You say "If the National Energy Board were to assert control". Have you control, without further legislation?

Mr. LAMAR: No, sir.

The CHAIRMAN: You feel your act would need to be amended to bring this particular pipe line under the jurisdiction of the board?

Mr. LAMAR: Yes, I do.

Senator McCutcheon: Would you have control if the medium in which the sulphur was moved was a hydrocarbon?

Mr. LAMAR: Not solely by that fact, sir. My opinion on that point is that, if the true function of the line is to transmit a substance other than a hydrocarbon substance, the fact that hydrocarbon was used as a transmitting medium would not of itself give the National Energy Board jurisdiction.

Senator McCutcheon: Certainly, if you move wood chips in water you would have no jurisdiction.

Mr. LAMAR: No, sir. There would not.

The CHAIRMAN: You do not need to answer this question. Perhaps it is a little unfair. Is your department aware of this bill and are you proposing or suggesting to amend the bill, too, so that the board would have jurisdiction?

Mr. LAMAR: No, that is not our intention, Mr. Chairman. We are aware of it and were aware of it before the committee's meeting and we take no position in respect of this bill along the lines you have suggested.

The CHAIRMAN: So what we would really be doing, if we passed this bill, is to allow this pipe line without any regulation of any kind?

Mr. LAMAR: At the present time in these areas that is the situation.

Senator McCutcheon: What about a little unregulated competition, which would be a good thing in this country?

The CHAIRMAN: Does anyone else wish to ask Mr. Lamar any questions? I think he has expressed the view perfectly clearly of the present legal situation, that the National Energy Board would have no control over this pipe line if we authorize it. Are there any more questions? I think we should keep that clear in our minds, in view of the questions which have been asked. If there are no questions, thank you, Mr. Lamar. Mr. Ritchie will go ahead now.

Mr. RITCHIE: Mr. Chairman, may I make a statement? I feel that, whether there would be any control or not, it would be prudent for Shell Canada, and we would anticipate operating just as if the National Energy Board did have control over us.

The CHAIRMAN: To the pure all things are pure.

Mr. RITCHIE: We would think that if we did otherwise and if there was some room for complain, it would not take long to raise the necessary legislation, in any event; so we would anticipate operating in the normal framework.

Senator CROLL: Mr. Lamar, is your minister, Mr. Pépin, aware of this bill and the fact that this is unregulated at the moment?

Mr. LAMAR: Yes, he is aware of that fact.



Mr. RITCHIE: Mr. Chairman, I would like to make one other statement on what we are proposing here. We have spent a lot of money on research and we are proposing to spend a substantial amount more on research. We are doing this and asking at this time for a bill to incorporate Solids Pipe Line Company Limited because we could ill afford to spend this kind of money on research and find if we were successful that we were unable to build the line we are going to. Whether the National Energy Board, if we use hydrocarbons have the right under their act to regulate this line or not—that is something I am not aware of at the moment. I think Mr. Urie said at the beginning if the slurries did not contemplate the use of hydrocarbons, and if hydrocarbons were not being used we would not be troubling you today. In those circumstances we would not need a special act. It is only because we contemplate using hydrocarbons that we need a special act. And if we use hydrocarbons, then it comes under the National Energy Board. That is why we are here. Despite what Mr. Lamar said, I would feel uneasy at spending this kind of money unless we had a special act company and the right to build a pipe line.

Senator CROLL: I gather you will not feel disappointed or let down if at some future date there is amending legislation to the energy act—I don't know when it will be—which will cover this?

Mr. RITCHIE: I have already said that we would be operating as if they had the right to look over our shoulder in any event. To answer your question directly, we would not be upset.

The CHAIRMAN: I think the position is clear to the committee now. Any further questions of Mr. Ritchie? He is a very helpful witness.

Mr. URIE: One thing I forgot. I think I was a little delinquent earlier in introducing Mr. Ritchie in that I did not give you his background. He is Vice-President of Transportation and Supplies for Shell Canada. He is a Canadian, and a graduate of the University of Toronto and of the University of Western Ontario. He has been with Shell Canada since his graduation in 1934, and I think his dissertation here today has amply proven his experience.

The CHAIRMAN: Have the promoters any other witnesses they wish to bring forward?

Mr. URIE: No, sir. We have the other gentlemen here, but it is not necessary to call them. They are here to deal with the more precise technical phases and to answer questions on that if necessary.

The CHAIRMAN: Is the committee satisfied with the general purposes of the bill?

Senator CROLL: I will move the bill.

The CHAIRMAN: There is a technical amendment.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, The Senate: I have nothing to add except that it is interesting to note that recently I read where a technical engineer somewhere in the west said that there is in contemplation a people's pipe line. He mentioned that at some time it might be possible to transport people.

The CHAIRMAN: I suppose honourable senators may anticipate being transported by pipe line to our own homes in Ottawa—in slurry form. What slurry is to be used I will leave to your imagination.

Senator McCUTCHEON: Alcohol.

The CHAIRMAN: Taking the bill section by section, shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2, subsection (2), "Proviso". Shall subsection (2) carry?

Hon. SENATORS: Carried.



The CHAIRMAN: Section 3, "Capital stock". Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4, "Head office and other offices". Shall section 4 carry?

Hon. SENATORS: Carried,

The CHAIRMAN: Section 5—this section says:

The Company shall have all the powers, privileges and immunities conferred by, and be subject to all the limitations, liabilities and provisions of the National Energy Board Act, and any other general legislation relating to pipe lines enacted by Parliament.

The effect of that will be to bring it within the control of the National Energy Board in spite of the situation as Mr. Lamar has discussed it.

The LAW CLERK: It might be just as well in the circumstances. What has happened is that the powers conferred on pipe line companies have outstripped the definition contained in the National Energy Board Act. Perhaps it should read, "The Company shall be subject to any general legislation in relation to pipe lines enacted by Parliament." I am thinking of any particular legislation which might enlarge the definition. I am just throwing this out from the top of my head.

The CHAIRMAN: I think our Law Clerk should think it over and we can come back to section 5.

Section 6—"Power to construct and operate pipe lines." Shall section 6 (a) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 (b) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 (c), "Ancillary powers" carry?

Hon. SENATORS: Carried.

The CHAIRMAN: I understand there is a technical amendment to section 7, about which I will ask our Law Clerk to say a few words.

The LAW CLERK: I have proposed the amendment. Perhaps Mr. Urie would care to discuss it.

Mr. URIE: At the time the draft bill was originally submitted to the legislative clerk it was in the exact form in which it is today except he added paragraph (3) of clause 4 to it. We have no objection to that, but by so doing the necessity for including subsections (3) and (4) of section 21, as referred to in clause 7 was obviated. Therefore, unfortunately we all missed it and we are now suggesting that the words in the fourth line of clause 7, "subsections (3) and (4) of section 21, and—", be deleted. And with reference to section 22 which is there referred to; the only applicable provision of section 22 which is needed is subsection (2) so that the section would now read as follows: "The provisions of subsections (7), (8), (9), (10), (10a), (11), (12) and (13) of section 12, and subsection (2) of section 14, and section 15 and section 19, and subsection 1 of section 20, and sections 22, 35, 36, 37, 39, 40, 62, 63, 64—", and so on. It would be identical from there on.

Senator LANG: What are all these sections about?

Mr. URIE: These are various sections of the National Energy Board Act which are useful for any corporation not included in Part III of the act which deals with special act companies. My clients feel that the adoption of this section and the powers given to them are advantageous. By the same token

under section 8 you will see certain sections under Part III have been excluded as we are empowered to do.

The CHAIRMAN: Mr. Hopkins, have you checked these?

The LAW CLERK: Yes.

The CHAIRMAN: And you are agreeable to the amendments to section 7?

Will somebody move it?

Senator CROLL: I will move it.

The CHAIRMAN: I don't know that I need read it. Shall section 7 as amended carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8—shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 10 carry? This deals with a 10 per cent limit which is fairly usual, I think. Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We are left now with section 5. If we leave out section 5 would that not bring the company automatically under the National Energy Board Act and the requirements which follow?

The LAW CLERK: In view of what Mr. Lamar said, that it is possible that this type of pipe line doesn't come under the National Energy Board Act, and in view of the possibility there may be general legislation at a later date, my suggestion is that we strike out clause 5. If it does not apply we are only creating imaginary or perhaps real problems. May I suggest that we strike out clause 5 and renumber the others.

Senator CROLL: You are playing on dangerous ground here. Mr. Lamar thinks we are not governed by this. On the other hand we have an act which deals with these subject matters and whether we are governed on them doesn't really mean much difference at the moment. We can correct it if in the opinion of the Minister of Justice it should be amended. Also in the other place if they don't feel it is right they can amend it.

The CHAIRMAN: I feel the same way. It gives the impression that this Parliament wishes this company to be governed by regulations, and even if it wasn't it is our desire that it should be. I understand from the promoters that they expect to be covered anyway and have no objection.

Senator CROLL: I think this bill will raise considerable opposition in the house if we strike out clause 5. It is unnecessary. From what we have heard it would cover the situation if we leave it to be corrected by the Government.

The CHAIRMAN: And if the committee gives instructions to Mr. Lamar to communicate to his minister the proceedings this morning he can consider whether he should not amend his own bill. I would be in favour of leaving clause 5 in.

Senator LANG: It is brought to my attention that it was mentioned in the Speech from the Throne that the National Energy Board Act was to be amended to bring slurry lines under the jurisdiction of that board. It has not yet come forward, but it is the intention to bring it forward in the future.

Mr. URIE: I might say we are quite pleased to have it left in. In addition the powers which are granted to this pipe line as listed under clause 6 go far

beyond the transportation of only solids. It is anticipated to be only solids, but there may be others.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Carried.

The committee adjourned.







First Session—Twenty-seventh Parliament  
1966

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable A. K. HUGESSEN, *Chairman*

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No. 8

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*Complete Proceedings on the Bill C-210,*  
intituled:

"An Act respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province."

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WEDNESDAY, JUNE 29, 1966

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WITNESSES:

Mr. Graham Macdougall, General Solicitor, C.N.R.; Mr. K. M. Ralston, Mining Engineer, Assistant Chief of Development, C.N.R.

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REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Adrian K. Hugessen, *Chairman*  
The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*).  
(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 28, 1966:

"Pursuant to the Order of the Day, the Honouable Senator McDonald moved, seconded by the Honourable Senator Baird, that the Bill C-210, intituled: "An Act respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Baird, that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, June 29, 1966.

Pursuant to adjournement and notice the Standing Committee on Transport and Communications met this day at 8:00 p.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Connolly (*Halifax North*) Dessureault, Gouin, Hollett, Kinley, McDonald, McElman, Power, Quart, Roebuck, Smith (*Queens-Shelburne*), Welch.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

### Bill C-210

"An Act respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province,"  
was read and considered.

On motion of the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings on the said Bill.

The following were heard:

Mr. Graham Macdougall—General Solicitor, CNR

Mr. K. M. Ralston—Mining Engineer, Assistant Chief of Development, CNR.

On motion of the Honourable Senator Aseltine, it was resolved to report the Bill without amendment.

At 9:15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,  
*Assistant Chief Clerk of Committees.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 29, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill C-210, intituled: "An Act respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 29, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill C-210, intituled: "An Act respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province", has in obedience to the order of reference of June 28, 1966, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

OTTAWA, Wednesday, June 29, 1966.

The Standing Committee on Transport and Communications to which was referred Bill C-210, respecting the construction by Canadian National Railway Company of a line of railway in the Province of Manitoba from the vicinity of Stall Lake on the Chisel Lake Subdivision of Canadian National Railways in a northeasterly direction for a distance of approximately 12 miles to a point in the vicinity of Osborne Lake in The Pas Mining District of that Province, and of a line of railway in the Province of Saskatchewan from the vicinity of Watrous on the Watrous Subdivision of the said Railways in a northeasterly direction for a distance of approximately 18 miles to a point in the vicinity of Guernsey in the Regina Mining District of that Province met this day at 8 p.m. to give consideration to the bill.

Senator A. K. HUGESSEN in the Chair.

The Chairman: Honourable senators, it is 8 o'clock and I see a quorum. I will ask the committee to come to order.

I would ask for the usual resolution authorizing the reporting of our proceedings and the printing thereof.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: As honourable senators will remember from the explanation, there are two branch lines covered by Bill C-210, one in Manitoba and the other in Saskatchewan. It was Senator McDonald who introduced the bill. Have you anything you wish to add, senator, before we proceed?

Senator McDONALD: No.

The CHAIRMAN: You gave us a very clear and full explanation of the bill in the Senate. The witnesses to appear before us are Mr. Graham Macdougall, General Solicitor of the CNR, whom we have had before; Mr. K. M. Ralston, Mining Engineer, Assistant Chief of Development, CNR, and Mr. Jacques Fortier, Counsel, Department of Transport.

I suggest that we take first one branch and then the other. Mr. Macdougall will deal with the Manitoba line first.

Mr. Law Clerk, I have not got a formal report from you.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate: Mr. Chairman, I never report on public bills. This is a public bill. I report only on private bills, such as CPR bills.

**Mr. Graham Macdougall, General Solicitor, Canadian National Railways:** Mr. Chairman and honourable senators, may I say, first of all, that in addition to Mr. Ralston, our Mining Engineer and myself here this evening, we have Mr. Maurice Archer, Vice-President of Research and Development of Canadian National railways, to assist the committee if assistance is required.

Gentlemen, you have heard, I know, some details about the construction of the first branch line, which is that running between Stall Lake and Osborne Lake. I have brought this little map which makes it clear. You will see on the map the Hudson Bay Railway running to Churchill, and from Flin Flon Junction the Sheradon link railway line which was built in 1963. That line from Object Lake to Chisel Lake is part of what is known as the Chisel Lake Subdivision. It was built in 1960 and was 51 miles long. In 1964 it was extended for a further eight miles, from Chisel Lake to Stall Lake, to serve the mine of the Hudson Bay Mining and Smelting Company, which is mining this area.

The request for authority before you this evening is to extend that line still farther, an additional 12 miles, from Stall Lake to Osborne Lake, where a new mine of the Hudson Bay Mining and Smelting Company is now being opened up for the production of lead and zinc, copper and zinc concentrates. This extension from Stall Lake to Osborne Lake has been put in the bill in the usual form for branch line authorization. There is nothing strange about the bill. It is in the same form as earlier bills.

The cost of the line is an estimated \$1.6 million, which amounts to approximately \$133,000 per mile—about the average for construction work in the area.

**The CHAIRMAN:** It is a pretty rough area?

**Mr. MACDOUGAL:** Yes, it is fairly rough. As you can see from the map, there are many lakes and it is fairly rough.

The bill provides for the usual financial arrangements, whereby funds can be borrowed and financed for the construction. But, as has been the practice in the last few years, Canadian National proposes to use the authority it has to use moneys normally generated for capital purposes in the company, for this type of construction. Therefore, we do not intend to use the borrowing powers but we will construct this under the normal capital and subgenerated funds.

The Hudson Bay Mining and Smelting Company have spent approximately \$3.5 million in this area for the development of the mine. The shaft has been sunk and they are on the way to opening it up. They are looking for the line to be coming into service by the end of 1967, so they are anxious to start as soon as we can get it under way. The plan is to start producing early in 1968. The expectation is that they will have approximately 270,000 tons of ore to ship from this mine when it gets into production; and that ore will, as does the rest of the ore from other mines at this stage, go over Canadian National to Flin Flon for smelting. The reserves in this area are quite substantial, so it looks as if they will have a good operating mine for quite a number of years to come.

**Senator ASELTINE:** Are there any highways in that area?

**Mr. MACDOUGAL:** Not in that territory.

**Senator ASELTINE:** Between Object Lake and Chiesel Lake?

**Mr. MACDOUGAL:** I do not think there is anything in the way of a highway there. There is a highway under construction in that area. There are some in the area of Snow Lake and Chisel Lake but I do not think there is anything connecting to the Flin Flon area.

We have made the usual arrangements with the Hudson Bay Mining and Smelting Company for the export of the output, an arrangement we have made



with them whereby we obtain a guarantee of traffic from them. We think the basis of it will provide a fully satisfactory commercial enterprise, not only for them but for C.N. We are satisfied to go ahead on that basis with them. The plan itself will probably provide work for about 100 men in the area when it gets into production.

That, honourable senators, is the sort of outline of the arrangements we have and we are seeking your authority to construct that 12-mile branch line.

The CHAIRMAN: How much of that cash do you expect to generate year by year on that branch line? Will that pay off the cost, in a reasonable time?

Mr. MACDOUGAL: That is our anticipation, senator. It is the same as we do in the case of all branch lines constructed in recent years. We have worked out a traffic guarantee with the industry concerned. In all of them that we have presently operating, and there are quite a number, each one of them is producing a satisfactory return in overheads and expense, and profit. Therefore, we are quite satisfied that the others with which we have worked out this arrangement, and this one looks as if it will be equally satisfactory.

Senator HOLLETT: How many new miners will there be in that area?

Mr. MACDOUGAL: The company estimates that there will be employment for an additional 100 men.

Senator CONNOLLY (*Halifax North*): There is quite a difference in the topography of the country and, consequently, in the cost per mile in the case of these two lines.

Mr. MACDOUGAL: Yes. The second branch line is being built across the prairie whereas this line is being built up through rock and bush country, with a lot of water, and there is a difference in the cost arising from these factors.

The CHAIRMAN: Are there any further questions to Mr. Macdougall on this particular line?

Do you wish to add anything, Mr. Archer?

Mr. Maurice Archer, Vice-President Research and Development, Canadian National Railways: I think it has been fairly well covered, Mr. Chairman and I do not wish to add anything.

The CHAIRMAN: Very well. Shall we proceed to the Manitoba line?

Mr. MACDOUGAL: In the case of the Manitoba line we have a potash development. As you know, this is in Saskatchewan. Saskatchewan has quite a marked development of potash industry in recent years and this is another development of that kind. The development is owned by Alwinsal Potash Company, whose mine site is located at Guernsey.

It is proposed that we will build to this mine a railway line approximately 18 miles in length. The cost of this line, being built across the prairie, without any particular difficulties, is approximately \$100,000 a mile, or \$1.8 million over the whole line.

This plant expects to produce approximately one million tons of potash a year, which will be sold, some in the Great Lakes area, some in northeastern United States, and some exported by the Pacific ports to Pacific Asian countries.

The potash business, as you know, is highly competitive in Saskatchewan. These companies are very anxious to have a good rail service, particularly to get a good supply of cars and they are anxious to have this line put in just as soon as we can build it.

I am told that the traffic volume that will come out of here is fairly substantial, being one million tons.

Just how much we will get of that, of course, depends upon the competitive features that are involved; but presuming that we get 50 per cent—and I do not know that we will—it would add approximately \$4.5 million to our revenue.

Again we have obtained a traffic guarantee from this company, on the usual basis, the same as other producers in the area. This will produce for us a fully viable satisfactory commercial arrangement. We are quite happy to go ahead on that basis with this company.

Senator BAIRD: Who will be your competitors there?

Mr. MACDOUGAL: For traffic?

Senator BAIRD: Yes.

Mr. MACDOUGAL: The Canadian Pacific. In most of these areas, both companies are in. In this case, the C.P. is already into that plant and the potash company has come to us and asked for our line. In nearly all these developments that is what happens. Both companies are serving and the developers themselves seek that, because naturally it gives them a much better position for car supplies, which is one of the prime requirements.

The CHAIRMAN: I think we have had that on several occasions in connection with potash lines in Saskatchewan. You have to be quite sure of your supply of cars.

Mr. MACDOUGAL: We would like to have it all to ourselves and they would like to have it all to themselves.

The CHAIRMAN: I thought the sponsor told us yesterday that this company had agreed to give you 50 per cent.

Mr. MACDOUGAL: No, we have a traffic guarantee with them which will produce a good substantial proportion of their traffic, but it would not be correct to say that there was a guarantee of 50 per cent. Nevertheless we hope that we will get more.

The CHAIRMAN: Whatever they have guaranteed you are satisfied with?

Mr. MACDOUGAL: Yes. It is good business not only for the company but for the railroad.

Senator KINLEY: What is that city there?

Mr. MACDOUGAL: Saskatoon. The line actually comes off at Watrous and the Canadian Pacific Railway is above it up here. And this is the Canadian National line through Humboldt.

The CHAIRMAN: And then is there a line also from Watrous through to Prince Albert?

Mr. MACDOUGAL: This is the line right there. One goes here from west over to Watrous and Young and runs up north that way. It is a branch line.

The CHAIRMAN: You cannot use that line to get in the way you want to go?

Mr. MACDOUGAL: No, it is that much farther away. It is easier to go in directly across the prairie than it is to come in this way.

Senator McDONALD: What is the capacity in tons of the cars you use for moving potash in bulk?

Mr. MACDOUGAL: Ninety tons. This car is used a great deal because not only is it covered but it is a bigger car. We are under pressure for more, but they cost money to build. We are trying to do our best. They are a good type of car for a lot of other things too.

Senator ASELTINE: We were down around Saskatoon on Monday and we passed a potash train about a mile long. I wonder if you have the necessary equipment to haul the potash when you do get it to the railroads?

Mr. MACDOUGAL: Yes, we have the equipment. We are building more of this type of car. We have a lot of them in service at the moment. Most of the potash when you are moving it in bulk loads goes in solid trainloads.

The CHAIRMAN: Somebody told us three or four years ago—maybe it was yourself—that you had to lease a number of cars from companies in the United States.

Mr. MACDOUGAL: Yes, and sometimes the industry itself will lease cars from United States companies. Generally speaking there is enough equipment to do the job, and there is always competition to do the job. Potash is a seasonal thing and there comes a time when everybody wants the cars at the same time and you can have difficulty in getting the supply you want.

Senator ASELTINE: Is any of it used in Saskatchewan?

Mr. MACDOUGAL: I am not sure.

Mr. K. M. Ralston, Mining Engineer, Assistant Chief of Development, Canadian National Railways: This potash is not used in Saskatchewan.

Senator ASELTINE: This will be mainly for export.

Mr. MACDOUGAL: Yes.

Mr. McDONALD: The bulk of this product will be moved from this point in bulk?

Mr. MACDOUGAL: It will be moved from there for export, some to the northeastern United States, and some to the Great Lakes area, and some to Ontario.

The CHAIRMAN: Is the committee satisfied? Shall I report the bill?

Senator HOLLETT: May I ask one question? Do you stockpile any of that? Do you keep any of it for use in parts of Canada?

Mr. MACDOUGAL: We don't stockpile it, but the industry sometimes does so.

Senator SMITH: (*Queens-Shelburne*): Does it have to be covered when it is stockpiled?

Mr. MACDOUGAL: I think it is preferable to have it covered when stockpiled.

Senator McDONALD: They have large domed silos for storing it, and they are constructed so that they are well supported on a cement foundation and they are protected from the weather. There are five of these domes.

Senator ROEBUCK: How is it mined?

Senator McDONALD: It is muck-mined with the exception of one area just west of Regina where it is solution-mined.

Senator HOLLETT: Is it treated before it is shipped?

Mr. RALSTON: The ore is taken from the mine and it is refined. In every case the potash crude ore is treated at the mine and in the process of drying the crude ore is made into a concentrate, and it is the concentrate that is shipped and is the marketable commodity.

Senator McDONALD: Would it be true to say that when the product leaves the mine site it is completely refined, and that there is no further processing, or in some instances are there other fertilizers blended to give a complete fertilizer?



Mr. RALSTON: Yes, that is true. It is mixed with nitrogen and phosphorous, and you will sometimes see on bags of fertilizers certain numbers such as 13 or 20 and this indicates the proportion of potash, nitrogen and phosphorous. It is those that constitute the fertilizer and it is those which are absolutely necessary.

Senator ROEBUCK: Do you get it in veins like minerals or is it in one big deposit?

Mr. RALSTON: It is rather like a coal deposit. In Saskatchewan there is a huge tabular deposit, a stratum which is mixed and lies between deposits of salt. In most cases it varies from 8 to 13 or 14 feet in thickness.

The CHAIRMAN: Is the committee ready to consider the bill?

Senator WELCH: Could I ask a question? When the potash comes out of the mine is it ready to blend with other fertilizers or does it have to be processed in some way?

The CHAIRMAN: The witness said a few moments ago that it had to be processed at the mine to a certain extent.

Mr. RALSTON: When it comes out of the process it is finally blended.

The CHAIRMAN: Shall I report the bill? Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the schedule carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee concluded its consideration of the bill.



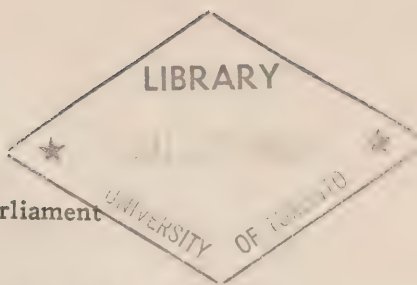












First Session—Twenty-seventh Parliament  
1966

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

## TRANSPORT AND COMMUNICATIONS

---

The Honourable A. K. HUGESSEN, *Chairman*

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No. 9

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*Second and Final Proceedings on the Bill S-35,*  
intituled:

“An Act respecting the prevention of employment injury in federal works, undertakings and businesses”.

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WEDNESDAY, JUNE 29, 1966

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WITNESSES:

The Honourable John R. Nicholson, Minister of Labour; Mr. W. G. McGregor, Vice-Chairman, National Legislative Committee, Brotherhood of Railroad Trainmen; Mr. Jacques Fortier, Q.C., Counsel, Dept. of Transport; Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Dept. of Labour.

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REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Adrian K. Hugessen, *Chairman*  
The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 7, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Croll, seconded by the Honourable Senator Benidickson, P.C., for second reading of the Bill S-35, intituled: "An Act respecting the prevention of employment injury in federal works, undertakings and businesses".

After debate, and—

The question being put on the motion it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Croll moved, seconded by the Honourable Senator Benidickson, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, June 29th, 1966.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 8:00 p.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Connolly (*Halifax North*), Dessureault, Gouin, Hollett, Kinley, McDonald, McElman, Power, Quart, Roebuck, Smith (*Queens-Shelburne*), Welch.

*In attendance:* Mr. E. Russell Hopkins, Senate Law Clerk and Parliamentary Counsel.

Consideration of Bill S-35 "An Act respecting the prevention of employment injury in federal works, undertakings and businesses" was resumed.

The following were heard:

The Honourable John R. Nicholson, Minister of Labour.

Mr. W. G. McGregor, Vice-Chairman, National Legislative Committee, Brotherhood of Railroad Trainmen.

Mr. Jacques Fortier, Q. C., Counsel, Department of Transport.

Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Department of Labour.

After discussion, it was resolved to report the Bill with the following amendments:

"1. Page 3, line 37: After "equipment," insert "vehicles,".

"2. Page 4, line 20: After "use" insert "and disposal".

"3. Page 5, line 35: After "on" insert "or to be carried on".

"4. Page 4: Immediately after paragraph (i) insert the following as new paragraph (j):

"(j) prescribing mechanical standards for vehicles and equipment,".

"5. Pages 4 and 5; Reletter present paragraphs (j) to (p) as paragraphs (k) to (q) respectively."

At 9:15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,  
*Assistant Chief Clerk of Committees.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 15th, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-35, intituled: "An Act respecting the prevention of employment injury in federal works, undertakings and businesses", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

## REPORT OF THE COMMITTEE

WEDNESDAY, June 29th, 1966.

The Standing Committee on Transport and Communications to which was referred the Bill S-35, intituled: "An Act respecting the prevention of employment injury in federal works, undertakings and businesses", has in obedience to the order of reference of June 7th, 1966, examined the said Bill and now reports the same with the following amendments:

1. *Page 3, line 37:* After "equipment", insert "vehicles,".
2. *Page 4, line 20:* After "use" insert "and disposal".
3. *Page 4, line 35:* After "on" insert "or to be carried on".
4. *Page 4:* Immediately after paragraph (i) insert the following as new paragraph (j):

"(j) prescribing mechanical standards for vehicles and equipment;".

5. *Pages 4 and 5:* Reletter present paragraphs (j) to (p) as paragraphs (k) to (q) respectively.

All which is respectfully submitted.

A. K. HUGESSEN,  
*Chairman.*

**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT**  
**AND COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Wednesday, June 29, 1966.

The Standing Committee on Transport and Communications to which was referred Bill S-35, respecting the prevention of employment injury in federal works, undertakings and businesses, met this day at 8.30 p.m. to give further consideration to the bill.

Senator A. K. HUGESSEN in the Chair.

The CHAIRMAN: Gentlemen, we now have to reconsider Bill S-35, the Canada Labour (Safety) Code. I understand that the Minister is to be here, though he is not here at the moment.

You will recall, honourable senators, that I indicated to you at our last meeting that one or two people wished to submit briefs in connection with this bill, and that The Canadian Labour Congress had expressed a desire to submit a brief. I have been in touch with them, and I have a letter from them dated today, signed by Mr. Donald MacDonald, Secretary-Treasurer of The Canadian Labour Congress.

I think I should read this letter to the committee:

Dear Senator Hugessen,

On June 14, 1966, the President of the Canadian Labour Congress, Mr. Claude Jodoin, wrote to you in respect of Bill S-35, which is to be known as the Canada Labour (Safety) Code. At the time that Mr. Jodoin wrote it appeared probable that we would be able to overcome some of our difficulties in relation to preparation of a submission but we have not been successful in this respect.

In our view, this is a most important piece of legislation and we are most anxious to give it the thorough study and consideration it deserves. We have been in touch with a number of our affiliated organizations which were presumed to have a major concern with the subject of the bill and they have expressed interest in providing material for any submission we may make and, as well, being present at further hearings of the committee. One of these organizations is the Canadian Air Line Flight Attendants' Association which has some rather special problems in this field.

The purpose of my letter is to respectfully request your committee to give consideration to the possibility of further hearings on Bill S-35, even if this means that such hearings take place when Parliament reconvenes after the announced summer recess. The co-operation of your committee would be very much appreciated by us and, I am sure, by other organizations which may not yet have had an opportunity to fully study the bill and its implications. We understand, of course, that another opportunity may present itself when the House of Commons gives consideration to the legislation.

Our Mr. Hepworth has told me of the courtesy and co-operation he has enjoyed in discussing this matter with you and we would like the committee to know that we appreciate this very much.

Yours sincerely, (signed) Donald MacDonald, Secretary-Treasurer.

I spoke two or three times to Mr. Hepworth after our last meeting. I explained to him that we were hoping to go ahead with this bill, and that, as this is a bill which originated in the Senate, if we were to pass it without any representations, this would not mean that they would be denied the opportunity to make representations when they go before the House of Commons.

I suppose it is up to the committee to decide whether they wish to consider the suggestion that we hold this bill over.

Senator ASELTINE: Does that letter not say they would be satisfied with that?

Mr. CHAIRMAN: With what?

Senator ASELTINE: With making their representations to the House of Commons.

The CHAIRMAN: This simply says, "we understand, of course, that another opportunity may present itself when the House of Commons gives consideration to the legislation." I do not know, honourable senators, but I think we have to have some sort of time limit that we can agree to. This bill was, after all, presented on the 24th day of May.

If honourable senators agree, we might take the view that we have given as much time as we can to representatives, and that if they want to make any further representations they should make them to the House of Commons. Is that the view of the Committee with regard to this particular request?

Hon. SENATORS: Agreed.

The CHAIRMAN: I am told that there is somebody else who wishes to make a representation now. Is there anybody here who wishes to make a representation to us in respect of this bill?

Senator ROEBUCK: I see Mr. McGregor, here, whom we have already heard. He had some objections to the bill as it now stands. Mr. McGregor, have you something to say to us?

**Mr. W. G. McGregor, Vice-Chairman, National Legislative Committee, Brotherhood of Railroad Trainmen:** Mr. Chairman, honourable senators, I was just holding a hearing brief this evening, and I cannot speak on behalf of the Canadian Labour Congress to the letter you read. However, the question which arises in my mind is: after the bill has been through your committee here in the Senate, is there any guarantee that the bill would go to a committee in the other place where representations could be made? I do not know, but this is the only question which arises in my mind.

The CHAIRMAN: That is perfectly true, Mr. McGregor. We cannot legislate what the House of Commons will do, and it is conceivable that the House of Commons might want to go through this bill in Committee of the Whole. However, I think, if you or any other reputable organization told the members of the House of Commons that you wanted to make representations, I think you would be almost sure to get a favourable reply and they would refer it to a committee where you could make your representations.

Senator ASELTINE: I wonder if the Minister might give a guarantee.

The CHAIRMAN: I understand that the Minister is here now. What do you feel about that, Mr. Minister?



**The Honourable John R. Nicholson, Minister of Labour:** Mr. Chairman, honourable senators, one reason we sent this bill here a little over a month ago was to afford organizations the full opportunity to be heard. We are anxious to get this through. We could have taken it before the Commons Labour Committee, but we are anxious to have it implemented because an assurance was given by my predecessor last year that this bill would be introduced and put through as quickly as possible. I thought the representations made by the truckers here the last time I appeared before the committee were excellent. Some constructive suggestions were made and we are prepared to accept them. Also, I think the comments which were made by the Railway Brotherhood were very helpful because, even though they may necessitate amendments to the bill, at least the views of the organization and the comments of this committee were very helpful, because there will be opportunity, if this bill is passed by Parliament, for the Department of Labour to initiate proceedings before the Cabinet, if the Department of Transport does not do it, to implement the suggestions which have been made by the Railway Brotherhood organizations.

So far as the C.L.C. are concerned, I do not know. As far as my department is concerned, we have had no specific representations from them, except through the railway organizations which are one of their affiliated bodies.

Not knowing how long the House of Commons may be sitting—whether it is going to be two days or six days,—I would not want to give an undertaking that it would be referred to a committee, in view of the time that has elapsed and the opportunities which have been given to people who are interested in making representations.

**The CHAIRMAN:** Might I ask you this question? Perhaps it is a little unfair a question, Mr. Minister: would you object to acceding to the request of the Canadian Labour Congress and holding over discussion until the fall?

**Hon. Mr. NICHOLSON:** Until the fall? Yes, I would. I think this bill should be passed; I had hoped it would be passed by Parliament before this, because it is legislation that, in the opinion of my department, is overdue. It is legislation with respect to which the Government gave consideration a year ago. We feel the bill would have been introduced or brought before both Houses of Parliament last fall, if it had not been for the election. We would prefer not to defer it at this time.

**Senator POWER:** May I ask the minister this: if we were to pass this bill tonight, is there a prospect of its getting through the Commons in the next two days? Or will it be delayed anyway?

**Hon. Mr. NICHOLSON:** I think not, senator. There is a chance of getting it through the House of Commons tomorrow or Monday.

**The CHAIRMAN:** We appreciate the view of the minister, which I think is rather more or less the view the committee has expressed, that we do not want to wait any further.

**Senator ROEBUCK:** It is a good bill, senator, and we ought to facilitate it.

**The CHAIRMAN:** I understood that somebody else wished to make representations about this bill? It was indicated to me that Mr. Magee of the Canadian Trucking Associations Inc. was going to appear tonight.

**Hon. Mr. NICHOLSON:** Mr. Chairman if I might speak on that, I mentioned earlier some suggestions which were made by the truckers at the last meeting of this committee. Officials of my department and our legal adviser have been in touch with the Department of Justice and I think all of the suggestions, though we feel they may not be essential, are certainly helpful to remove any doubt or any ambiguity, and we would be prepared to accept such suggestions. We have actually had the departmental officials working, I think with your legal adviser, and the Justice Department, to incorporate the amendment in the bill.

The CHAIRMAN: Before we proceed further, I gather that there is nobody who wishes to make further representations. Before we start on the subject of the bill, we have Mr. Fortier here, legal counsel for the Department of Transport. You will remember that a number of representations were made to us at the last meeting about various conditions for the trainmen, pure water conditions and sanitation. It seems to me that the trouble was that the railwaymen did not feel that anybody had a right to deal with this question.

Senator ROEBUCK: They were passing the buck from one department to another.

The CHAIRMAN: What have you to say on that, Mr. Fortier?

Mr. Jacques Fortier, Q.C., Counsel, Department of Transport: Mr. Chairman and honourable senators, at the last meeting of your committee on June 15, in respect of this Bill S-35, you asked that the committee be advised on the jurisdiction of the Department of Transport with respect to the provisions of potable water and sanitary provisions and sanitary facilities for railway employees while on duty on trains.

The Minister of Transport is charged with the administration of the Railway Act. However, the Board of Transport Commissioners, which was established under the authority of the Railway Act, constitutes a court of record and therefore the jurisdiction of the minister in respect of orders and regulations made by the board would not extend to them.

The section of the Railway Act which is under discussion, section 290, authorizes the board to make orders and regulations in respect of these items of sanitary provisions on trains, and that would be one section of the act in respect of which the Minister of Transport will not exercise any jurisdiction over the board.

Senator ROEBUCK: If the board says it has not jurisdiction, then who has?

Mr. FORTIER: I was coming to that, Senator Roebuck. In May of this year, Mr. Walter of the Brotherhood of Locomotive Engineers, wrote to the Minister of Labour in respect of this very question, and the Minister of Labour referred the matter to the Minister of Transport, who in turn asked the Chief Commissioner of the Board of Transport Commissioners for his comments. With your permission, Mr. Chairman, I would like to read to the committee the reply that I received from the Chief Commissioner. The letter is addressed to the Deputy Minister of Transport and is dated June 13. It states:

My connection with the question of toilet facilities on trains goes back to 1956, when the National Legislative Committee of the International Railway Brotherhoods requested the board to set down for formal hearing the necessity and desirability of toilet facilities being supplied in the cabs of diesel locomotives. This was followed by informal discussion between me, Commissioner Chase and the Brotherhood officers. I suggested that a simple way to obtain a decision as to the board's jurisdiction would be for the Brotherhoods to make a request for an order in a specific situation as a test case and, if the board ruled that it had jurisdiction, the wider inquiry could go on from there. The Brotherhood officers intimated that they might have recourse to federal and provincial sanitation legislation. They did not pursue the matter with the board.

As to jurisdiction, Mr. Varcoe, Deputy Minister of Justice, gave an opinion to the Department of National Health and Welfare in 1948, from which I quote:

"With reference to your third question, I may say that I am of the opinion that the Department of National Health and Welfare Act confers the necessary authority to make regulations with respect to

sanitation and cleanliness on the railroad properties referred to, as long as it be understood that this relates only to properties which are operated as an integral part of the railway operations of carriers engaged in international and interprovincial traffic. I might also direct your attention to Section 287 (now 290) of the Railway Act (R.S.C. 1927, Chapter 170) wherein the Board of Transport Commissioners is authorized to make regulations providing for the protection of property and the protection, safety, accommodation and comfort of the public in running and operating of trains. I suggest that regulations of the nature referred to above confined to railway stations might be justified on the ground that they constitute protection, safety and comfort of the public."

In 1961, the sessional committee on Railways, Air Lines and Shipping, in its *Minutes of Proceedings* No. 8, recommended:

"That the Department of National Health and Welfare in consultation with the provincial health authorities, study the question with a view to setting up a standard sanitary code for all railways in Canada and their employees."

Throughout 1962 there was extensive correspondence between National Health and welfare and the Brotherhoods and the railways. Then, in 1963, the Minister of National Health and Welfare suggested an interdepartmental committee. I offered to have a representative of the board on the committee, but we had no further request for attendance or participation in consideration of the matter.

The question whether the board has power under section 290(1) (L) of the Railway Act to order toilet and other sanitary facilities is arguable. I think that a generous interpretation would give such power. In view of the cost of such facilities, the railways might dispute the board's power. There are also engineering and mechanical problems, modification of older diesel units, design of future units, etc.

Having regard to the part that National Health and Welfare and Labour have played in the subject matter, an interdepartmental committee might be set up. I doubt that this would resolve the matter. *If the Brotherhoods wish the Board to hold an enquiry, we are quite willing to do so.* If the railways questioned the Board's jurisdiction, the Board would have to rule in this respect, after hearing the parties.

Senator ROEBUCK: He mentions depôts, stations, as being affected by section 290. Would the same logic apply also to bunkhouses?

Mr. FORTIER: I would imagine so, senator. But, Mr. Chairman, you will recall that at the meeting of June 15, Mr. McGregor of the Brotherhood of Railway Trainmen, presented a brief which contains, amongst other statements, these two:

- (1) That the Board of Transport Commissioners, in a judgment reported in Canadian Railway Cases, volume XI, 1911, ruled that section 30 of the then Railway Act—which is now section 290—which gives the board authority to make orders and regulations requiring proper shelter to be provided for all railway employees "on duty", and further that when these men are in at divisional points they are not "on duty".
- (2) That in 1955 and 1956 the Board of Transport Commissioners was requested to regulate, under authority of section 90 of the Railway Act, for the provision of toilets on diesel engines, when the board advised that it had no jurisdiction in the matter.

These items are referred to in this letter from the Chief Commissioner and he has this to say:



In the course of the debate, Senator Roebuck referred (Senate Debates, June 2, p. 642) to a 1910 decision of the board which held that it had no power to order railways to provide shelter for their employees when they were not on duty (11 C.R.C. 336). That decision is of little significance in the present instance, but the senator read it with section 290 (1) (L) of the Railway Act, which is as follows:

“(1) The board may make orders and regulations. . .

(L) generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains and the speed thereof, or the use of engines, by the company on or in connection with the railway.”

The Chief Commissioner goes on to say that Senator Roebuck appeared to treat the decision as a ruling by the board that its powers re safety and comfort of the employees did not include sanitation.

This does not appear to be the effect of the ruling in 1910. Then he goes on to say what I have already told you about in connection with the board going back to 1956. I would suggest, Mr. Chairman, that in view of the opinion given by the Chief Commissioner that his decision would meet the objections of the brotherhood with regard to this Bill S-35 seeing that the board is prepared to entertain a petition from the brotherhoods for regulating and making orders in this matter.

The CHAIRMAN: I think that would clear the air so far as the Brotherhood is concerned.

Senator ROEBUCK: Let us see what Mr. McGregor has to say about it. This is new. Maybe we should be prepared too hear further on this.

The CHAIRMAN: The commissioner invites the railway workers to make an application to him.

Mr. MCGREGOR: Mr. Chairman and honourable senators, this situation involves going back again over the grounds that my predecessors have been covering for some 20 years to have some regulatory authority improve the sanitary conditions for railroad workers. There is no doubt that a decision to be rendered by the board will be acceptable but I take it that the regulatory authority could be included in this bill so as to embody the recommended standards of the Department of National Health and Welfare. The departments have been studying this question for some 10 years or more. I would be prepared to accept the position of the regulatory authority and the respective authorities that are going to deal with this question. I understand from the correspondence that was read by Mr. Fortier that it is now the Department of Transport that will appear. The Minister of Transport over the years stated they had no authority and this was when the former Minister of National Health and Welfare, the Hon. Paul Martin declared they had the authority.

Senator ROEBUCK: The witness says they have no authority over those things upon which the board rules. But it has authority—

Senator HOLLETT: Doesn't section 8 take care of the whole problem?

The Minister may establish consultative and advisory committees on which employers and employees are represented to advise the Minister on any matters arising in relation to the administration of this Act, to assist in the establishment of reasonable standards of safety and to recommend regulations respecting safe employment practices, procedures and techniques.

Wouldn't that cover the whole problem?



The CHAIRMAN: Except that subsection (3) of section 3 of the bill says that this act does not apply in connection with the operation of ships, trains or aircraft. I suggest, Mr. McGregor, that in view of the attitude which the Chairman of the Board of Transport Commissioners takes, the Board of Transport Commissioners has the right to study and to deal with these problems and that they would be willing to deal with any application you might make to them on that basis. That would be the basis for you to proceed on.

Mr. MCGREGOR: To test section 290 of the Railway Act.

Senator HOLLETT: Can you tell us why subsection (3) of section 3 is there? Why does it make an exception of the operation of ships, trains and aircraft?

The CHAIRMAN: The minister gave a long explanation of that the last time he was here. Perhaps he would repeat it again.

Hon. Mr. NICHOLSON: I will try not to be too lengthy this time. There are or there have been for many years regulations passed by the Board of Transport Commissioners and a lot of agencies associated with the Department of Transport that have had to deal with ships, trains and aircraft. That is the one field in which there has been some safety legislation. The Department of Transport had this experience and they want to continue to do that work. We want to cover the general field not already covered by legislation. As a result of discussions with the Department of Transport, the minister and deputy minister and other officials agreed that they would be allowed to continue their work in the fields in which they had been working for several decades, and if there should be any conflict, the Governor in Council would deal with it, and if action was not being taken any minister or any member of the cabinet would be in a position to initiate proceedings under subsection (3).

Senator HOLLETT: I think I remember it now.

Hon. Mr. NICHOLSON: In looking at my notes I referred to the representations being made by the Teamsters that were most constructive and helpful. I should have said that they were made by Mr. Spector on behalf of the Teamsters, and Mr. Magee, the representative of the Canadian Trucking Associations Inc. was advised of this meeting tonight. He was told he would have an opportunity to present his views if he wanted to.

The CHAIRMAN: That is perhaps the next thing the committee should deal with now. You will remember Mr. Spector made several suggestions for changes in the wording of certain sections of the bill, and that the minister was kind enough to say he would look at them and let us know at the next meeting whether or not they were of any value. I understand there are some suggestions for changes in certain sections. Perhaps we might deal with those now.

Hon. Mr. NICHOLSON: Mr. Currie of the Department of Labour has been working closely with the Department of Justice on the suggestions put forward by Mr. Spector. One of them may not be necessary but to remove any doubt or ambiguity the department would be quite prepared to accede to four changes. Mr. Currie will deal with those. I think a memorandum on the subject has been given to your legal adviser.

The CHAIRMAN: May we deal with these one by one? The first one appears on page 2, paragraph (b) which starts:

(b) any railway, canal, telegraph or other work or undertaking connecting a province with any other or others of the provinces,—

Mr. Spector suggested that after the word "railway" we should add the words "land transport operation". What do you have to say on that, Mr. Currie?

Mr. J. H. Currie, Director, Accident Prevention and Compensation Branch, Department of Labour: This is one of the extremely complex legal problems

involving the Constitution. Mr. Davis, our Departmental Solicitor, examined this question at some length and produced a memorandum, and I would like to quote the concluding two paragraphs of Mr. Davis' treatment of the suggestion that we have to present the thing to the committee in the sense of our department's understanding of it. The first paragraph reads:

To introduce new words to clarify a field of jurisdiction that is acknowledged and has jurisprudence to support it would be inviting further litigation as to the meaning or meanings of the new words.

I think we observed at the last meeting of the committee that the present phrasing is taken from the BNA Act and is found elsewhere in several statutes of the Department of Labour. Some of them are listed in clause 30 of the present bill before you, with which we hoped this bill would eventually be coordinated in the Labour Code. It would seem quite inconsistent to introduce any new wording here.

Mr. Davis concludes in this way:

At the same time, the reasonably consistent pattern over the years describing jurisdiction in the Labour Statutes, a pattern which has been found to be *intra vires*, would be departed from, and possibly lead to further litigation as to the meaning of the new words that are introduced.

In short, the department feels with respect to this long established construction that it cannot accept the suggestion that it be amended in any respect. There is no question as to the jurisdiction of the federal Government.

The CHAIRMAN: I think all senators will remember that our own Law Clerk expressed the same views.

The LAW CLERK: I still agree with that.

Hon. Sen. POWER: Does that rule the truckers out?

The LAW CLERK: No, not at all. It includes them by virtue of a judgment of the Judicial Committee of the Privy Council. This is in the language of the BNA Act. Interprovincial or intra-provincial truckers have been held to be within it.

The CHAIRMAN: Any work connecting one province with any other province—

Hon. Sen. ROEBUCK: That is fine, but it does not express that. It is not the act that the cases have ruled on. It is another act that the cases have ruled on to which you are referring. Here we are passing a new act with the old act in view and with the cases in mind and leaving the truckers out.

The LAW CLERK: No, if I may say so, Senator Roebuck. The *Winner Case*, it is true, involved a discussion of certain legislation, but the judgment was based upon the Constitution, the language in the British North America Act, and concluded that trucking operations interprovincial fall within the language of the BNA Act, which this act reproduces. Am I not right in that?

Mr. CURRIE: Yes, perfectly right.

Hon. Mr. NICHOLSON: I was just going to say, Mr. Chairman, that in the consideration we gave to it, if you look at the wording of subsection (b), page 2,—“any railway, canal, telegraph or other work or undertaking connecting a province with any other or others of the provinces, or extending beyond the limits of a province,”—a highway is an undertaking or a work which connects one province with another.

The LAW CLERK: And it was so held by the Privy Council.

Hon. Mr. NICHOLSON: I think that would properly answer Senator Roebuck.

Hon. Sen. ROEBUCK: I withdraw my objection.

The CHAIRMAN: I think the committee would agree that we will not accept this suggestion as regards paragraph (b) on page 2.

Now, the second suggestion he made was on page 3, paragraph No. 7, subsection (1) in line 37. He suggested in the line "use of plants, machinery, equipment, materials buildings," that we include after the word "equipment" the word "vehicles,".

The LAW CLERK: That is acceptable to the minister, I believe.

Hon. Mr. NICHOLSON: It is quite acceptable. If there is any ambiguity, that amendment is acceptable.

Mr. CHAIRMAN: Will somebody move that?

Hon. Sen. POWER: What words are to be added?

The CHAIRMAN: In Section 7, subsection (1), page 3, line 37, after the word "equipment", add the word "vehicles,". That was suggested by Mr. Spector and is acceptable to the minister.

Hon. Sen. POWER: After the word "equipment" put the word "vehicles,"? It does not add anything.

The LAW CLERK: That was my opinion, but no harm is done if they want it.

Hon. Sen. POWER: No harm is done, but it does not add anything.

Hon. Mr. NICHOLSON: As I said earlier, senator, we do not think it is strictly necessary, but if anybody thinks there is an ambiguity we have no objection to the word going in.

Senator POWER: If it pleases them.

The CHAIRMAN: What do the committee feel about that? Shall we accept that amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: "Vehicles," goes in on line 37, then.

There have been drawn to my attention one or two amendments which I believe were suggested by the Department of Labour for Ontario, and which I understand the federal minister agrees to. I would refer you to paragraph (f), on page 4, which reads: "respecting the handling, transportation, storage and use of substances or devices dangerous to the safety or health of employees,". There is a suggestion that after the word "use" should be inserted the words "and disposal" so that it would read "respecting the handling, transportation, storage, use and disposal of substances or devices dangerous to the safety or health of employees;". I think that is a valuable suggestion.

Hon. Mr. NICHOLSON: It is a good suggestion, Mr. Chairman, and since, as I mentioned at the earlier meeting of the committee, we have requested and were sure of the cooperation of the provincial governments in endorsing this, we welcome any suggestions they have for changes of this nature. They will be doing the inspection work.

The CHAIRMAN: Does the committee agree to that amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Now, you will remember that Mr. Spector suggested two new paragraphs after paragraph (i). His first paragraph was a new paragraph (j), "respecting the mechanical safety of any vehicles and equipment used in any land transportation or undertaking." What were your views on that, Mr. Minister?

Hon. Mr. NICHOLSON: Mr. Chairman, on that, after discussions between my officers and the draftsmen in the Department of Justice, we suggested that the present paragraph (j) be struck out and the following substituted:

respecting the furnishing of information to the Minister or safety officer as to the location of the work, undertaking or business, and the



nature of the operations carried on or to be carried on therein, and the nature and amount of the materials used or to be used in the operations

Again, that not only commends itself to my department, but commends itself to the Ontario Department of Labour.

The CHAIRMAN: That was not quite what I was getting at, but we might as well deal with the present (j) while we are about it.

Hon. Mr. NICHOLSON: I was doing them in order. Take out the original (j), substitute what I have just read, and then immediately after the present paragraph I think there will be some re-numbering involved. Put in the suggestion which was made by Mr. Spector as (k).

The CHAIRMAN: It would be (k), would it?

Hon. Mr. NICHOLSON: Yes, it would be re-numbered.

The CHAIRMAN: Honourable senators, the amendment proposed in paragraph (j), simply means that there is an amendment on line 35: "nature of the operations carried on or to be carried on."

Hon. Mr. NICHOLSON: That is the insert.

The CHAIRMAN: That is the insert and that sounds reasonable enough. That is submitted by the Ontario Department of Labour. Does that meet with the approval of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: That is an amendment to line 35 on page 4.

Now, your suggestion is that the new paragraph submitted by Mr. Spector would be the new (k). That would be the one I read, would it?

The LAW CLERK: "Prescribing mechanical standards for vehicles and equipment."

Senator ROEBUCK: Respecting the mechanical safety of any vehicles? How does it go?

The CHAIRMAN: You want a new (k), reading as follows:  
prescribing mechanical standards for vehicles and equipment;

That would be the new (k).

Hon. Mr. NICHOLSON: That was Mr. Spector's suggestion at the last meeting of the committee.

The LAW CLERK: Then you would re-letter the subsequent paragraphs accordingly?

Hon. Mr. NICHOLSON: That is correct.

The CHAIRMAN: Very well. The committee understands that. We have a new paragraph (k): "prescribing mechanical standards for vehicles and equipment;". That in some respects meets Mr. Spector's suggestion.

Senator HOLLETT: "Respecting the reporting and investigation of accidents and dangerous occurrences." Was that cut out altogether?

Hon. Mr. NICHOLSON: No, that comes later.

The CHAIRMAN: Does the committee agree with that?

Hon. SENATORS: Agreed.

The CHAIRMAN: Another suggested amendment was: "respecting working conditions in so far as they affect the safety of the public in general and employees in particular."

What is your view on that? That was a new suggestion by Mr. Spector.

The LAW CLERK: With regard to that, we felt it was not very appropriate.

In the first place, the measure is not directed towards the prevention of accidents but to the safety of the public in general. This is general in many



other statutes. Secondly, the whole substance of this measure, and the whole purpose of it, is to establish safe working conditions.

On these grounds, this incidental subparagraph would be redundant, because the whole measure deals with safe working conditions. Therefore, with respect, we suggest that this be rejected.

Senator ROEBUCK: I pointed out the weakness of that section when he was referring to the public in general, rather than to the public. There is a grave distinction between the public in general and the public or certain individuals in the public.

His next step was the men in particular, instead of just the men. So the draftsmanship of the proposal was very bad.

The CHAIRMAN: I take it the committee agrees that we reject that proposal?

Hon. SENATORS: Agreed.

The CHAIRMAN: The only other suggestion that Mr. Spector made appears on page 8, under the heading of special safety measures, subparagraph (1) where a safety officer considers that "any place, matter or thing", and so on. He suggested that the word "vehicle" should be added after the word "matter", so that it would read:

Any place, matter, vehicle or thing.

It seemed to me that that may be a little redundant. After all, a vehicle is certainly a thing, is it not?

Hon. Mr. NICHOLSON: I think that was pointed out by one of the senators.

The LAW CLERK: I believe I pointed it out. Senator Roebuck suggested that the *ejusdem generis* rule might make it dangerous, but I do not think there is likely to be any more difficulty. The three things are completely unrelated, and if a vehicle is not a "thing" I do not know what it is.

The CHAIRMAN: I take it we agree that we discard that suggestion?

Hon. SENATORS: Agreed.

The CHAIRMAN: Are there any other amendments that the minister or the department would like to suggest or desire to put into the bill? If not, we might consider it section by section, unless there is any further discussion.

Senator ROEBUCK: I would like to make one comment. I was the one who first attacked this measure in the Senate, as you may remember. I think what I said on that occasion was perfectly sound, but a good deal has happened since that time. We have had representations from three of the leading representatives of the Brotherhood. The minister has been here. He has given us an assurance that, if the evils complained of are not corrected, this bill gives his department power to act. I think we have got a fair assurance from him that the department will act. Therefore while the objections, as I say, were sound, and the grounds upon which they were built are still there, I think that if this bill is passed—and it is a good bill in general—the matters complained of will be looked after in a reasonable time. Therefore, I am prepared to vote for the measure.

The CHAIRMAN: I suppose I should go through the form of putting the bill section by section.

Section 1, short title. Shall section 1 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 2, interpretation. Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3, application. Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3(a), 1, 2 and 3. Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4, duty of employer. Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5, duty of employee. Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6, saving. Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: There is an amendment to section 7, by the addition of the word "vehicle," and it is further amended by the changes in the present paragraphs (f) and (k). Shall section 7, as amended, carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8, special committee. Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9, inquiries. Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 10, safety officers. Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 11, agreements respecting use of provincial employees as safety officers. Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: You will be using that a great deal, I imagine, Mr. Minister. Section 12, research into accident prevention. Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13, employment safety programs. Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 14, duties of safety officers. Shall section 14 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 15, obstruction of safety officer. Shall section 15 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16, safety officer's evidence in civil suits. Shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17, imminent danger. Shall section 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18, reference to magistrate. Shall section 18 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19, directions arising out of inspection. Shall section 19 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 20, offences. Shall section 20 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 21, offences by employees. Shall section 21 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 22, other offences. Shall section 22 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 23, evidence of direction. Shall section 23 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 24, time limit. Shall section 24 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 25, trial of offences. Shall section 25 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 26, information. Shall section 26 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 27, offences by responsible employees. Shall section 27 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 28, injunction proceedings. Shall section 28 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 29, notice to furnish information, and proof of failure to supply information. Shall section 29 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 30, Statute Revision Commission to Consolidate Labour Statutes. Shall section 30 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 31, coming into force. Shall section 31 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill, as amended, to the Senate?

Hon. SENATORS: Agreed.

The CHAIRMAN: I am very much obliged to honourable senators for sitting through a long hot evening and doing such excellent work in getting this bill through.

The committee adjourned.







First Session—Twenty-seventh Parliament  
1966

# THE SENATE OF CANADA

## PROCEEDINGS

### OF THE

### STANDING COMMITTEE

### ON

# TRANSPORT AND COMMUNICATIONS

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The Honourable A. K. HUGESSEN, *Chairman*

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No. 10

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*First Proceedings on the Bill S-44,*  
intituled:

“An Act to amend an Act to incorporate the Richelieu Bridge  
Company”.

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WEDNESDAY, DECEMBER 14, 1966

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### WITNESSES:

*Department of Public Works:* Lucien Lalonde, Deputy Minister;  
P. Sorokan, Chief, Legal Services.

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1966

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Adrian K. Hugessen, *Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Macdonald ( <i>Brantford</i> ),
Baird,	McCutcheon,
Beaubien ( <i>Provencher</i> ),	McDonald,
Bourget,	McElman,
Burchill,	McGrand,
Connolly ( <i>Halifax North</i> ),	McKeen,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Hugessen,	Vien,
Isnor,	Welch,
Kinley,	Willis—(47).
<b>Lang,</b>	

*Ex officio members; Brooks and Connolly (Ottawa West).*

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 8, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill S-44, intituled: "An Act to amend an Act to incorporate the Richelieu Bridge Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, December 14th, 1966.

Pursuant to adjournement and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

*Present:* The Honourable Senators Hugessen (*Chairman*), Aseltine, Burchill, Fournier (*Madawaska-Restigouche*), Gershaw, Gouin, Hays, Isnor, Kinley, Lefrancois, McCutcheon, McDonald, McElman, Methot, Paterson, Pearson, Rattenbury, Smith (*Queens-Shelburne*), and Welch. (19)

*In attendance:* R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

On Motion of the Honourable Senator McCutcheon it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-44.

Bill S-44, "An Act to amend an Act to incorporate the Richelieu Bridge Company", was read and considered.

The following witnesses were heard:

*Department of Public Works:*

Lucien Lalonde, Deputy Minister.

P. Sorokan, Chief, Legal Services.

The Honourable Senator Deschatelets informed the Committee that counsel for the Company did not wish to appear before the Committee, but wished to register a protest against the proposed legislation.

The Honourable Senator Flynn informed the Committee that the Deputy Minister of Justice of the province of Quebec was not available at this time.

On Motion of the Honourable Senator Smith (*Queens-Shelburne*) it was *Resolved* that further consideration of the said Bill be deferred until an opinion was received from the Department of Justice.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,  
*Clerk of the Committee.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

OTTAWA, Wednesday, December 14, 1966.

The Standing Committee on Transport and Communications, to which was referred Bill S-44, to amend an act to incorporate the Richelieu Bridge Company, met this day at 10.00 a.m. to give consideration to the bill.

Senator A. K. Hugessen in the Chair.

The CHAIRMAN: Honourable senators, it is 10.00 o'clock, and we have a quorum.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: The committee is called upon to study Bill S-44, to amend an act to incorporate Richelieu Bridge Company. This is quite an unusual bill, and I think the committee will require a good deal of explanation before it reports it.

It will be recalled from the speech of Senator Deschatelets when he introduced the bill on second reading that the Richelieu Bridge Company was incorporated by a special Act passed by Parliament in 1882, with the power to build a bridge across the Richelieu river near the United States border, the act providing that nobody else shall be entitled to build a bridge within three miles one way or the other, it being a toll bridge.

The Act of 1882 also provided that the bridge should be a work for the general advantage of Canada, thereby falling into federal jurisdiction. That is authorized by the British North America Act.

As you will see, the sole purpose of the bill now before us, is to take out this declaration in the Act of 1882 to the effect that this bridge is a work for the general advantage of Canada.

Senator KINLEY: What is the reason for taking it out?

The CHAIRMAN: That is what I am about to explain. We were told in the explanation on second reading that it is the desire of the Government of the Province of Quebec to build a new toll-free bridge at the same site. The present bridge is an old wooden bridge and is a toll bridge. For some reason or other, which so far I have not been able to explain, the Quebec Government feels it cannot build a new bridge unless this provision of the old Act of 1882 is taken out. Personally I do not know why that should be, but no doubt we shall hear an explanation. Apparently the Quebec Government wishes to build a new bridge and feels it cannot build it unless the declaration in the old Act that the existing bridge is for the general advantage of Canada is taken out.

Senator KINLEY: Is the river navigable at that point?

The CHAIRMAN: The Richelieu River is a navigable river at that point, and any bridge would have to be approved by the Department of Public Works under the Navigable Waters Protection Act.

Senator KINLEY: Would this change liquidate the company of the old bridge?

The CHAIRMAN: That I do not know. As the Province of Quebec is interested in this legislation they have been kept advised of the proceedings of the committee and of this present meeting, and I understand one of the witnesses is to be Mr. L. Lalonde of the Department of Public Works.

Now, to answer your question, senator, the present company is, of course, interested, or was interested, in this bill. It is a private company owned by shareholders. I have had some correspondence with their solicitor, Mr. Stein, of Quebec, and he has been notified of this meeting. I do not think Mr. Stein is here, and I do not know whether anyone is here representing the Richelieu Bridge Company. Anyway, you will be satisfied that they have been advised of this meeting.

Senator BURCHILL: Is Mr. Stein the president?

The CHAIRMAN: No. Mr. Stein is the lawyer representing the Richelieu Bridge Company.

Senator PEARSON: If the charter of this company is cancelled by the federal Government, does this involve a question of indemnity to this company from the federal Government for loss of their revenue?

The CHAIRMAN: This bill does not cancel the charter, it simply takes out from the Act section 18 which says that the bridge is a work for the general advantage of Canada.

Senator BENIDICKSON: Mr. Chairman, is it not usual in the preparation of a bill, particularly in the explanatory note, to quote verbatim the section to be repealed?

The CHAIRMAN: Reading over the explanatory note, I thought it was extremely unsatisfactory; it does not explain the matter at all. I think you are right, senator, that that is the usual provision.

I have a copy of the Act of 1882 before me; it is chapter 91 of the Statutes of 1882, and it proceeds to incorporate certain people and give the general authority to build the bridge, and so on. Section 18, which is the last section but one, states:

The bridge of the Richelieu Bridge Company hereby incorporated is declared to be a work for the general advantage of Canada.

The only effect so far as your question is concerned, senator, whether this bill passes or not, would be that if the Province of Quebec builds a bridge beside it, no doubt it will detract very greatly from its revenues, because it is a toll bridge. I suppose you might say it destroys the existence of the company, but the bill does not say anything of that kind.

Now, whether or not the Richelieu Bridge Company has made an agreement with the Province of Quebec as to indemnification, or anything of that kind, I have no knowledge. I think the principal thing we should concern ourselves with at the moment is why it is necessary to repeal section 18 of the present Act, and why the Province of Quebec feels it is necessary. I am not satisfied on that point yet.

Senator PEARSON: I am not satisfied with the bill at all.

The CHAIRMAN: Well, I think we should have a very careful inquiry.

Senator PEARSON: I think so, too.

Senator KINLEY: Is it a Government bill?

The CHAIRMAN: It is a Government bill.



Senator KINLEY: Should we not have the departmental representative here?

The CHAIRMAN: We have Mr. P. Sorokan, Chief of the Legal Services of the Department of Public Works. Perhaps he would be able to explain these mysteries to us. I suggest that we get the story from him, and then we can proceed with other witnesses.

Mr. Lucien Lalonde, Deputy Minister of Public Works: Mr. Chairman, I had not intended to make a statement, but having heard some of the questions asked by some of the honourable senators I think I may dispose of one item fairly quickly.

In the charter which was given to the Richelieu Bridge Company, section 12 prohibits the construction or operation by any person or company other than the company incorporated by the Act of any bridge or any other means of transportation across the river within a distance of three miles on each side. That I think is the crux.

Senator PEARSON: Does that still stand?

Mr. LALONDE: That still stands as long as that charter is an exclusive one under the jurisdiction of the federal Government.

The CHAIRMAN: Why?

Mr. LALONDE: Because it is a prohibition that has to be enforced even though the province may not accept it because it is the government having a higher jurisdiction. This is the interpretation that has been given to us, anyway. I can assure you there have been quite a number of legal opinions sought in connection with this.

The province came to the minister saying that they intended to build a bridge across that river within the provincial jurisdiction.

Senator BENEDICKSON: Whether we do any amending or not?

Mr. LALONDE: No. They intended to build a bridge. Then the question came up where the bridge would be built, and that prohibition immediately placed the bridge outside the area that could be of service to the main populated areas in this sector across this river.

Senator RATTENBURY: Is the bridge under discussion still in use?

Mr. LALONDE: Yes. It is still operative as a toll bridge.

Senator RATTENBURY: A toll bridge?

Mr. LALONDE: It is a wooden bridge, but it is still operative as a toll bridge. Of course, it is none of our business whether or not the province intends to charge tolls. I doubt if they will. This is not the sort of thing we do any more. We would look for a way out of this dilemma without revoking the charter of the company. We were told that since it is really obsolete or archaic to say that intraprovincial bridges still remain within the jurisdiction of the federal Government, in any province, we should try to find a way, with the representatives of the Department of Justice, of getting around the difficulty without revoking the charter.

This cancellation or repeal of Section 18, which declared it to be a bridge under the higher jurisdiction, we are told, will simply mean that the company continues to operate, but the province would now have some jurisdiction and because of the provincial jurisdiction, it eliminates the effect of that prohibition of three miles on each side of the bridge for the construction of a non-toll bridge.

Rightly or wrongly, we thought this was the best solution to a difficult jurisdictional problem. It is as simple as that.

Senator BURCHILL: Would it not be better if you had an agreement with the bridge company?

Mr. LALONDE: They will not agree to this because, as someone pointed out, if another person builds a bridge they may have a loss of revenue—but they could go to the provincial Government for compensation.

Senator BURCHILL: The federal Government may have a loss.

Mr. LALONDE: We may, but we do not think we are going to lose on it. It was the federal government that granted the charter and it can revoke all or any part of it at any time. Whether this is the kind of charter we would grant at this time is very debatable. I do not think we would.

Senator KINLEY: Is there any international aspect of this bridge? Is it on the road from the United States to Quebec?

Mr. LALONDE: It is a very small bridge between two villages. It is not on the main road, if that is what you mean?

Senator KINLEY: Yes.

Mr. LALONDE: No, it is not.

Senator GOUIN: Section 18 must have been put there for the purposes of giving jurisdiction.

Mr. LALONDE: In 1882, yes, sir.

Senator GOUIN: But it did give jurisdiction. Under the jurisdiction then given, the Province of Quebec would be all right in building a bridge.

Mr. LALONDE: Yes, only that they would have to come to the department to secure permission to put a bridge of a certain height over a navigable river. That they would have to do, but that is only so that they would not prevent navigation on that river.

The CHAIRMAN: Mr. Lalonde, may I summarize your evidence so far? You have said that, under the Act passed by this Parliament in 1882, this company has the exclusive right to build a bridge at this point, that nobody can build within three miles of it, and that it is declared to be a work for the general advantage of Canada. What you are telling us is that if we, in this bill, annul that section about the work being for the general advantage of Canada, we are also, in effect, annulling the provision about the three miles. In other words, we are doing indirectly what we do not dare to do directly here by changing section 12?

Mr. LALONDE: No, Mr. Chairman, we are not cancelling the charter. All we are doing is bringing that company under provincial jurisdiction.

The CHAIRMAN: But you still have section 12 of the Act of 1882. What you are trying to do is to deprive this company of the right it was given by section 12, by cancelling section 18. You cannot get around that.

Mr. LALONDE: What we are doing, Mr. Chairman, is saying that this bridge now comes within the jurisdiction of the province in so far as the other sections of the Act of Incorporation are concerned.

The CHAIRMAN: And therefore section 12 will have no effect.

Mr. LALONDE: This will be up to the province to argue with the Richelieu Bridge Company, and whether they will go to court or not I do not know.

Senator KINLEY: How old is the bridge?

Mr. LALONDE: It was built in 1882. It was repaired from time to time but it is still the same bridge.

Senator KINLEY: That is a long time. There is that feature about it, that it may be impeding progress. They may need another one there now.

Mr. LALONDE: The province certainly feel they need a modern bridge.

Senator KINLEY: Can they not build one without affecting this company?

Mr. LALONDE: As long as there is federal jurisdiction, they could not build one within three miles.

Senator KINLEY: They could come here and get the authority to build one, to put a bridge across tidal water or navigable water. They can come in their own right and ask for that privilege, can they not, Mr. Chairman? Cannot the Province of Quebec come and ask the federal Government, in their own right, for the authority to build a bridge?

The CHAIRMAN: There is a legal question there, which has been subject to some discussion.

Section 12 of the present act says that, after the bridge is open to the public, "no person or company" other than this company, shall build a bridge within three miles.

The words "no person or company" does not include the Crown, under the Interpretation Act.

I have read or heard the opinion expressed that section 12 in its present form does not prevent the Province of Quebec from building a bridge whenever it likes, quite regardless of section 12 or section 18.

Senator KINLEY: It is open to a competitor to build a bridge without interfering with somebody else?

Senator DESCHATELETS: Under the Interpretation Act, acting as the Queen in right of the province, if they decided to build another bridge within, let us say, 300 feet of the actual bridge, nothing could prevent them from building the bridge.

The CHAIRMAN: That I gather was the legal opinion that somebody gave, senator.

Senator BENIDICKSON: What does the solicitor for the department say about that?

Mr. P. Sorokan, Chief, Legal Services, Department of Public Works: May I review the question?

Senator DESCHATELETS: Under the Interpretation Act, I believe that the province would have the right today to build a bridge within, let us say, 300 feet of the existing bridge, without asking Crown permission, under the Interpretation Act, because they are not bound by the prohibition preventing any "company or person".

Mr. SOROKAN: The point you have brought up was considered by the various legal personnel involved in the background to this legislation. There was some doubt among the various lawyers involved as to whether in fact your assertion would be a valid one. As a result, the course which was adopted was in fact decided upon as the one that would resolve any of the doubt.

The CHAIRMAN: You say there was some doubt. Did you get any opinions from the Department of Justice?

Mr. LALONDE: Mr. Sorokan is from the Department of Justice.

Mr. SOROKAN: Yes, I am.

The CHAIRMAN: Has the department given a written opinion on this?

Mr. SOROKAN: The deputy minister did not give any opinion, Mr. Chairman.

The CHAIRMAN: I said "the department".

Mr. SOROKAN: There was an opinion given.

The CHAIRMAN: A written opinion?

Mr. SOROKAN: It may not have been a written opinion, but the effect of it was that it was doubtful that the provisions of section 12 would apply to the Province of Quebec.

The CHAIRMAN: That is just what I have been saying. It was not a written opinion?



Mr. LALONDE: Yes.

The CHAIRMAN: I think you had better file it.

Senator GOUIN: But the Crown is not bound by that special privilege and therefore the Province of Quebec also could build a bridge.

The CHAIRMAN: That I think is the legal opinion, senator. I would be interested, if we have an opinion from the Department of Justice, that this section 12 does not apply to the Province of Quebec. If that is so, what is the use of the bill?

Senator BURCHILL: If that opinion were upheld, there would not be any need for any legislation, would there?

The CHAIRMAN: Quite.

Senator GOUIN: It seems to me that it would be a question of interpretation. The way to maintain the Act, as far as I can see, would be for the company to eventually take a lawsuit in order to have the point decided by the court, without just discussing it.

The CHAIRMAN: Yes.

Senator RATTENBURY: Mr. Chairman, is this a pretty profitable operation for the bridge company?

The CHAIRMAN: I gather that the bridge company earns a reasonable revenue each year. It might be interesting to senators to know what they charge for a toll bridge: "Foot passengers, each way, two cents; rider, with horse or mule, each way, 10 cents; loose animals per head, except sheep, pigs, and spring colts following the mare, each way, 10 cents..." and so on.

Senator RATTENBURY: Is that the original incorporation?

The CHAIRMAN: That is the original incorporation, yes. It goes on: "cart, carriage, wagon, buggy, sleigh, cutter or other vehicles drawn by one animal each way, 25 cents; cart, carriage, wagon, buggy, sleigh, cutter or other vehicle drawn by two animals each way, 35 cents..." I do not know whether that includes cars.

Senator BURCHILL: There were no cars at that time.

The CHAIRMAN: I am told that it was 50 cents per automobile.

Senator McDONALD: Do I understand that you had some correspondence from the Commissioner of the Richelieu Bridge Company?

The CHAIRMAN: Yes, he wrote to me to say that his firm might be interested in making representations here and would I let him know when we were meeting. I wrote him and told him when we were meeting, but then I had to adjourn the meeting and I advised him of the present meeting.

Senator McDONALD: You have had no reply from him since?

The CHAIRMAN: No, I have had no further news. Whether that now means that the company is disinterested or that it has reached a settlement with the province, I have no means of knowing.

Senator McDONALD: It seems rather strange that their solicitor is not here. I wonder if there is some reason for his absence? Perhaps the gentleman tried to be here this morning but was not able to be here.

The CHAIRMAN: We sent him a letter on the 9th of this month advising him of the meeting today; we also sent him a telegram on the 12th telling him that it was being held today. There was no reply to either communication.

Senator KINLEY: Do they maintain a customs office at the entrance to this bridge? Is there a customs office there?

Senator FOURNIER (*Madawaska-Restigouche*): It is not an international bridge.



Senator KINLEY: I know, but it may be a convenient entrance to Canada from the United States.

The CHAIRMAN: At any rate, Mr. Lalonde, you are going to let us have this opinion, are you? You say you have a written opinion. I think the committee should see it.

Mr. LALONDE: This is what I am trying to verify. I thought there was a legal opinion because of a letter I received from Mr. Williams, but he is not a lawyer and he was just reporting on a verbal opinion. I have not found it yet.

The CHAIRMAN: I should perhaps add at this point that, right along, we have notified the various departments in the Province of Quebec of these hearings. Senator Deschatelets did that, I think. We certainly advised the Province of Quebec of the hearing today, but I do not know if there is anybody here representing the Province of Quebec.

Senator FLYNN: Mr. Chairman, by chance yesterday I saw the Deputy Minister of Justice of Quebec and he told me that the Honourable Paul Martineau was to be present at this hearing, concerning this bill, and that he had some representations to make. However, he mentioned Thursday as being the day of the meeting, and not today, so I do not know if it is by accident that he is not here now.

Mr. LALONDE: I have two memoranda on file, both of which refer to some discussions with the representatives of the Department of Justice, but I have no written opinions, sir.

Senator ASELTINE: Mr. Chairman, if the Province of Quebec attempted to buy this bridge, would there be any arbitration by which they could do so?

The CHAIRMAN: I have no information on that, and the trouble is that this morning we have neither a representative of the Province of Quebec nor a representative of the bridge company here.

Senator McCUTCHEON: Why deal with it, if they are not here? The letter went out on the 9th and the wire went on the 12th and today is only the 14th. It does not give them very much time to hear from us—what with the Christmas mail rush!

Senator BENIDICKSON: Would it be possible for Senator Flynn to phone the Deputy Minister of Justice of Quebec?

Senator FLYNN: That is what I thought of doing, and, if it is the wish of the committee, I will try to do that.

The CHAIRMAN: The notice was sent to the Minister of Justice and to the Minister of Public Works in Quebec. Both a memorandum and a wire were sent.

Senator FLYNN: When were they sent?

The CHAIRMAN: The letter was sent on the 9th and the wire on the 12th.

Senator McCUTCHEON: There could be a disruption in the mail service, you know, at this time.

Senator FLYNN: In any event, yesterday the Deputy Minister of Justice of Quebec mentioned that the hearing would be on Thursday, not today.

The CHAIRMAN: Well, I think we would be very grateful to Senator Flynn, if he would telephone them.

Senator BENIDICKSON: Mr. Martineau is practising in Hull, so he could probably be reached very quickly.

Senator RATTENBURY: While doing that, why not phone the lawyer from the company to see if he is also confused as to the date of the hearing.

The CHAIRMAN: Mr. Stein? Yes, that would be a good idea.

Senator DESCHATELETS: I might inquire about Mr. Stein, Mr. Chairman.

The CHAIRMAN: Yes, because I have not heard from him since his original letter. Thank you very much. In the meantime, gentlemen, while this legal question is outstanding, I think we should get a proper legal opinion, yes or no,

from the Department of Justice as to whether the present bill prevents the Province of Quebec from building a bridge, if it wants to, because that will have some effect on the question of whether we should go ahead.

Senator McCUTCHEON: Mr. Chairman, one point is whether it prevents the Province of Quebec from building another bridge, but the other question, surely, is whether it would prevent the Province of Quebec from expropriating the present company's property. It seems to me that this is no longer a work for the general advantage of Canada. The Province of Quebec, if it desired—and I do not know whether it does—could build a bridge at the same point by expropriating the present structure.

The CHAIRMAN: I have not heard any suggestion of that.

Senator McCUTCHEON: I merely raise the point to show that there are two aspects to the question.

The CHAIRMAN: That would be a question of Quebec law, of course. The Department of Justice could not properly handle that.

Senator McCUTCHEON: I am saying that, if it is returned, if we back out of saying that this is work for the general advantage of Canada, then, surely, the Province of Quebec would be the body that could expropriate.

The CHAIRMAN: Oh, yes, I see your point. Perhaps we should say that we want the opinion from the Department of Justice on two points. First of all, does the present Act with this prohibition prevent the Province of Quebec from building a second bridge if it wants to and, secondly, what will be the legal effect of our passing this bill striking out the declaration that it is a work for the general advantage of Canada? What would be the legal effect? What would be the legal position of the company, if we passed such a bill? We need information on both those points before we can deal intelligently with this point.

Senator KINLEY: Does the bridge company know about this bill?

The CHAIRMAN: Oh, yes. They were advised by letter on the 9th and by telegram on the 12th.

Senator McCUTCHEON: And their solicitor wrote to the chairman earlier, saying that he might want to make some representations.

The CHAIRMAN: I am not particularly concerned about the solicitor for the bridge company, because he did indicate that they were negotiating with the province. It may be that they have reached a settlement. However, I have not heard from him since the middle of November.

Senator McCUTCHEON: If everybody is agreed, we should be able to settle this very quickly.

Senator SMITH (*Queens-Shelburne*): Not being a lawyer, perhaps I should not get into too much discussion on it but I think we should get an opinion from the Department of Justice on this point. We could adjourn this meeting now, and when we meet again we will have those opinions and will be better informed as to whether or not the injured party, if any, is interested in appearing before us along with the representative of the Department of Justice of the Province of Quebec. If you and the committee feel, Mr. Chairman, that this is the course we should follow, I will move that the committee adjourn its consideration of the bill now.

The CHAIRMAN: Not just yet. Now, you gentlemen know what we want?

Mr. SOROKAN: In my notes I have, "Does the present Act prevent the Province of Quebec from building a new bridge within the three-mile limit on each side?"

The CHAIRMAN: Yes, it must be within the limitation of the bill.

Mr. SOROKAN: "And what would be the legal effect of the repeal of Section 18?" And in particular you were concerned about the province's right to deal with the company if we repeal section 18.

Senator HAYS: I think Senator McCutcheon's question was whether Quebec can do this, and whether the Justice Department of Canada can deal with it. Can they expropriate this bridge.

The CHAIRMAN: I am afraid I don't know. I could not say offhand.

Senator HAYS: If they have the power to do this sort of thing, then it seems to me they are passing the buck a bit.

The CHAIRMAN: I don't think they have the power under section 18. They could not expropriate a work done by the Government of Canada.

Senator BURCHILL: Before we vote on that, should we not wait for Senator Flynn and Senator Deschatelets to come back?

Senator McCUTCHEON: I make a different motion, that is that we adjourn during pleasure.

The CHAIRMAN: With the understanding that we do not meet again until we have an opinion from the Department of Justice on these points.

Senator McCUTCHEON: Mr. Martineau might come this afternoon and say that the province has reached an agreement, and everybody is happy.

Senator DESCHATELETS: I have just been in touch with the lawyer. He tells me he sent a letter to you, Mr. Chairman, the day before yesterday saying that they had decided not to make any representations and leaving the committee to handle the matter.

But they reiterate their objections to the passing of this legislation.

The CHAIRMAN: I object to anybody doing that without paying a lawyer to come up and say so.

Senator DESCHATELETS: Mr. Flynn is now in communication with the Deputy Minister of Justice in Quebec and he will return here in a few minutes.

Senator KINLEY: This bridge is 84 years old.

Senator PEARSON: Could we declare the existing bridge as an antique piece for centennial purposes?

Senator FLYNN: I could not reach Mr. Martineau because he left for Quebec City this morning. I tried to speak to the Deputy Minister of Justice in Quebec, and he is not in his office at the moment. I left a message for him to call us back. I was told that he would be back about eleven-thirty. I might suggest that the Committee adjourn now until two o'clock.

The CHAIRMAN: There was an earlier motion to adjourn *pro tem* pending receiving an opinion from the Department of Justice, and then we can meet again and give notice to these people. You have heard the motion to adjourn *pro tem*. I think before we meet again I should have mimeographed copies of the opinion from the Department of Justice sent to honourable senators so that they can read it before we reassemble.

Senator McELMAN: Before we do meet again perhaps there is another point which we should look at. Since the company which built the bridge was incorporated under a federal Act of Parliament, and the Crown in Canada has the responsibility in it, perhaps it would now be inclined to use its power of expropriation and turn it over to the province.

Senator PEARSON: Compensation would have to be paid.

Senator McELMAN: They erected it originally.

The CHAIRMAN: All I can say about that is that that would mean negotiations between the federal and provincial governments, and I have heard no word of any such negotiations or of that approach being adopted. Have you?



Mr. LALONDE: No, sir. There has been no negotiations with the company, and we have taken, rightly or wrongly, the attitude that the charter was granted in 1882 when times were very different from what they are now. They have not lost money on the bridge, and there was no obligation on the federal Government to continue the charter. They are not prepared to put more money into this bridge at this time. They have had the monopoly for so many years that there was no prejudice to them except loss of future profits, possibly.

Senator ISNOR: Mr. Chairman, I was wondering about section 12. Where it refers to traffic, would that cover modern traffic, and, if so, who has the authority to say whether the bridge is fit for traffic?

The CHAIRMAN: Has that question been raised, Mr. Lalonde?

Mr. LALONDE: Mr. Chairman, in 1963 the department received some queries as to whether the bridge was structurally sound, so we had an engineer carry out an inspection, but only in so far as it was sound the way it was built.

The report we made to the Board of Transport Commissioners was that we had reached the conclusion the bridge was structurally sound and capable of carrying the posted maximum load of 18,000 pounds; that is, nine tons.

Senator ISNOR: That was three years ago.

Mr. LALONDE: Yes, that was three years ago.

Senator ISNOR: How is it today?

Mr. LALONDE: We do not know.

The CHAIRMAN: We have a motion to adjourn until the call of the chair, when we receive the Department of Justice's opinion, for which we have asked.

Hon. SENATORS: Agreed.

The CHAIRMAN: Thank you, honourable senators.

The committee adjourned.





First Session—Twenty-seventh Parliament  
1966-67

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

## TRANSPORT AND COMMUNICATIONS

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The Honourable SALTER A. HAYDEN, *Acting Chairman*

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No. 11

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*Complete Proceedings on the Bill C-231,*

intituled:

"An Act to define and implement a national transportation policy for Canada, and to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions".

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TUESDAY, FEBRUARY 7, 1967

WEDNESDAY, FEBRUARY 8, 1967

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WITNESSES:

*Department of Transport:* The Honourable J. W. Pickersgill, Minister; J. R. Baldwin, Deputy Minister; R. R. Cope, Director, Transport Policy and Research; H. B. Neilly, Chief Economist, Railway and Highway Division, and Jacques Fortier, Q.C., Counsel.

*Province of Alberta:* J. J. Frawley, Q.C., Special Counsel.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Salter A. Hayden, *Acting Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Leonard,
Baird,	Macdonald ( <i>Brantford</i> ),
Beaubien ( <i>Provencher</i> ),	McCutcheon,
Bourget,	McDonald,
Burchill,	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Isnor,	Vien,
Kinley,	Welch,
Lang,	Willis—(46).

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, February 3, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Deschatelets, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill C-231, intituled: "An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

TUESDAY, February 7th, 1967.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

In the absence of a Chairman, and on motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Hayden was elected *Acting Chairman*.

*Present:* The Honourable Senators Hayden (*Acting Chairman*), Aseltine, Beaubien (*Provencher*), Brooks, Burchill, Connolly (*Ottawa West*), Gelinas, Gershaw, Gouin, Haig, Hollett, Isnor, Kinley, Lefrancois, Leonard, McDonald, Paterson, Pearson, Phillips, Power, Smith (*Queens-Shelburne*), Thorvaldson and Welch. (23).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Aseltine it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-231.

Bill C-231, "An Act to define and implement a national transportation policy for Canada, and to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions," was read and considered, clause by clause.

The following witnesses were heard:

*Department of Transport:*

The Honourable J. W. Pickersgill, Minister.

J. R. Baldwin, Deputy Minister.

R. R. Cope, Director, Transport Policy and Research.

H. B. Neilly, Chief Economist, Railway and Highway Division.

Jacques Fortier, Q.C., Counsel.

At 1 p.m. the Committee adjourned.

At 3.40 p.m. the Committee resumed consideration of Bill C-231.

*Present:* The Honourable Senators Hayden (*Acting Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Davey, Fournier (*Madawaska-Restigouche*), Gouin, Hollett, Isnor, Kinley, Lang, Lefrancois, Leonard, McCutcheon, McDonald, Pearson, Phillips, Power, Quart, Smith (*Queens-Shelburne*), Thorvaldson and Welch. (22)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel.

Mr. Baldwin was further heard in explanation of Bill C-231.

At 5.50 p.m. the Committee adjourned until Wednesday, February 8th, at 10.00 a.m. in Room 256-S.

WEDNESDAY, February 8th, 1967.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

*Present:* The Honourable Senators Hayden (*Acting Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Bourget, Brooks, Connolly (*Ottawa West*), Croll, Fournier (*Madawaska-Restigouche*), Gelinas, Gershaw, Gouin, Hays, Hollett, Isnor, Kinley, Lefrancois, Leonard, McDonald, Pearson, Phillips, Smith (*Queens-Shelburne*), Thorvaldson and Willis. (24).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-231 was further considered.

The following witnesses were heard:

*Province of Alberta:*

J. J. Frawley, Q.C., Special Counsel.

*Department of Transport:*

J. R. Baldwin, Deputy Minister.

On Motion duly put it was *Resolved* to report the said Bill without amendment.

At 12.15 p.m. the Committee adjourned to the call of the Chair.

Attest.

Frank A. Jackson,  
Clerk of the Committee.

## REPORT OF THE COMMITTEE

WEDNESDAY, February 8th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill C-231, intituled: "An Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other Acts in consequence thereof and to enact other consequential provisions", has in obedience to the order of reference of February 3rd, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,  
*Acting Chairman.*





## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

OTTAWA, Tuesday, February 7, 1967.

The Standing Committee on Transport and Communications to which was referred Bill C-231, an Act to define and implement a national transportation policy for Canada, to amend the Railway Act and other acts in consequence thereof and to enact other consequential provisions, met this day at 10 a.m.

The ACTING CHAIRMAN (*Senator Salter A. Hayden*) in the Chair.

The ACTING CHAIRMAN: I call the meeting to order. We have Bill C-231 before us this morning, and we have a number of witnesses. The minister will be available when we send him a note, say, around 11 o'clock. I thought in the meantime we could go through Part I of the bill, which is really the organization part of it, and get that behind us in order to have less to talk about.

May I have the usual motion to print the proceedings in the usual number?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: The witnesses we have in addition to the minister, who will be here shortly, are Mr. J. R. Baldwin, Deputy Minister of Transport; Mr. R. R. Cope, Director of Transport Policy and Research, and Mr. J. Fortier, Director, Legal Services. Mr. Ryan is not here this morning, but Mr. H. B. Neilly, Chief Economist, Railway and Highway Division of the Transportation Policy Branch, is here.

Now, who will address himself to Part I of the bill, if we have any questions on it?

**Mr. J. R. Baldwin, Deputy Minister of Transport:** I will undertake to answer such questions with the assistance of Mr. Cope.

The ACTING CHAIRMAN: Let us start in with a clause-by-clause review of Part I. If you have any questions we have Mr. Baldwin and Mr. Cope here to deal with them.

The preliminary section, section 1, will stand for the moment until we get to the end of the bill. Let us start with Part I, section 2. Section 2, I take it, carries?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 3 is the interpretation section. Have we any questions on that, the definition of terms? There are only three or four; I would not think there would be any problems there.

Senator LEONARD: Senator Brooks asked a rather interesting question the other day concerning what kind of commodities would be carried in a "com-

modity pipeline". At the time I wondered if there would be any further amplification concerning the type of commodities when this bill was before the committee.

Mr. BALDWIN: It is a little hard to say at this stage, but there are quite a wide number of possibilities. The two main techniques that are now being developed are the carriage of materials in what might be called sludge, or something of that sort, or, alternatively, the development of capsules which could contain solids or series of solids to be moved through a pipeline.

There is a wide variety of the type of commodity which could be carried, such as wood chips and coal, in the first instance, and, if it is a capsule as in the second instance, almost anything that you like can be put in the capsule.

Senator BROOKS: Are they carrying wood pulp now in western Canada?

Mr. R. R. Cope, Director of Transportation Policy and Research: They have tried out wood chips in Marathon, where they have successfully experimented, and, currently they are trying it out in the State of Maine.

Senator BROOKS: Yes, I was interested in the State of Maine, in knowing whether there was a pipeline carrying wood pulp there.

Mr. BALDWIN: I do not believe there is.

Senator PEARSON: What size of pipeline would carry wood pulp?

Mr. COPE: Solid pipelines can come in a number of sizes. I think at the current time in the world there are something in excess of 75 pipelines being used for the carriage of commodities. So far as I can remember, these are four inches and up, but the common sizes are eight, 12 or 14 inches.

Senator PEARSON: They would carry the chips quite easily, then?

Mr. COPE: Oh, yes. This seems to be perhaps the most likely commercial type of development in the coming years. Both that and perhaps the movement of sulphur, if they get certain technical problems cleared away.

Senator BROOKS: In what form is sulphur being carried?

Mr. COPE: Well, Shell, as you know, is talking about transporting sulphur in crude oil.

Senator ISNOR: What is the most easterly point at which the pipelines are operated at the present time?

Mr. BALDWIN: You mean pipelines for solids?

Senator ISNOR: Yes.

Mr. BALDWIN: The one I know of is the one referred to by Mr. Cope, in the Maine area.

Mr. COPE: The only one I can remember in Canada is at Copper Cliff, Ontario, a line of about 20 miles that carries copper concentrates, I believe.

The ACTING CHAIRMAN: Any other questions?

Senator ISNOR: Is there a pipeline existing east of Ontario?

Mr. BALDWIN: In Canada?

Senator ISNOR: Yes.

Mr. BALDWIN: For solids?

Mr. COPE: I am not aware of any, but there may be a one mile line used for tailings in some kind of mining operation that would not be considered a large type of installation.

Mr. BALDWIN: I should mention that there is no common carrier pipeline.

The ACTING CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 4 deals with the modes of transport which are enumerated in the section. Shall section 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 5 deals with the application of the Railway Act. Any questions? Shall section 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 6 provides for the constitution of the Canadian Transport Commission.

Senator BROOKS: I would assume, of course, that this commission should be set up geographically, that each section of Canada should be well represented. I am wondering just how the 17 members would be chosen.

Mr. BALDWIN: It would be a matter for the Governor in Council to determine, sir. There is nothing in the statute that requires specific geographic representation, but I would assume that this question would be very active in the mind of the Governor in Council in the appointments. Indeed, if you look at the existing membership of the existing boards that are to be absorbed into this commission you will find they represent most areas of Canada.

Senator BROOKS: Will these boards be composed sort of holus bolus?

Mr. BALDWIN: They are automatically transferred to the new commission, sir.

Senator PEARSON: And the staffs as well?

Mr. BALDWIN: And the staffs as well.

Senator ISNOR: As commissioners?

Mr. BALDWIN: Yes, as commissioners.

The ACTING CHAIRMAN: That is why they number 17.

Senator ISNOR: That is the total number now.

Mr. BALDWIN: The total authorized number on boards being absorbed at the present time is, I believe, 13.

Senator DESCHATELETS: So there might be four or five vacancies to be filled.

Mr. BALDWIN: I think there are four new positions and two or three existing vacancies to be filled.

Senator LEONARD: Perhaps when the minister comes that would be a good question to ask him.

The ACTING CHAIRMAN: Shall section 6 stand?

Senator LEONARD: Stand.

The ACTING CHAIRMAN: Section 7 is just the allocation of positions on the commission.

Senator PEARSON: What about the minister?

Mr. BALDWIN: By Governor in Council.

Senator BROOKS: The qualification for one of the vice presidents is that he should be a barrister, is that correct?

The ACTING CHAIRMAN: That is right.

Senator BROOKS: What are the qualifications for this expert on review and research and so on? I think he should be a man of very high qualifications.

Mr. BALDWIN: I think it would be the intention to look for someone with very high qualifications in that field of transportation, in research in particular, one with both experience and competence.

Senator BROOKS: We have such men now on the three boards mentioned, have we not?

Mr. BALDWIN: This would not be for me to comment on, sir.



Senator BROOKS: It is a very important point. Perhaps the minister will comment on that when he comes.

The ACTING CHAIRMAN: Section 8 is Prohibited Interests. Shall section 8 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 9 deals with staff.

Senator McDONALD: Does section 9 refer to professional staff?

Mr. BALDWIN: Each of them is set up with a type of staff that you would expect in a transportation regulatory entity. There is a rate costing staff, a research staff, a legal staff, a licensing staff. These generally speaking would be the main divisions you would find I think in the Air Transport Board or the Board of Transport Commissioners.

The ACTING CHAIRMAN: Section 9 deals with the secretary. Shall section 9 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 10, the duties of the secretary. Shall section 10 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 11 provides for the staff of the commission. Shall section 11 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 12 provides that the offices shall be in Ottawa and elsewhere. Shall section 12 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 13 provides for the very necessary commodity salaries. Shall section 13 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 14, the powers and duties of the commission. Any questions?

Senator ISNOR: I wonder if Mr. Baldwin will comment on sections 8 and 14 combined. How are you going to find the qualified men to fill those positions, who have had training in the various interests as outlined in section 8.

The ACTING CHAIRMAN: Not section 8, which deals with prohibited interests.

Senator ISNOR: But I mean qualified for all types of positions.

Mr. BALDWIN: They can dispose of their interests, I suppose, but there is a problem concerned there. However, in legislation of this sort you will find something similar to this for example, in the Railway Act with regard to the Board of Transport Commissioners. I think it is a proper provision, and I do not think it is an impediment to finding men of adequate qualifications to serve on the commission.

The ACTING CHAIRMAN: Any questions on section 14, Senator Isnor?

Senator ISNOR: No.

Senator BROOKS: These men to be appointed are getting certain rates of salaries. Is it the intention that their salaries be increased?

Mr. BALDWIN: The salaries are set by the Governor in Council and presumably would be dealt with in the procedure that is now followed in dealing with all orders in council related to salaries, namely, the Government reviews these from time to time and makes appropriate adjustments at regular intervals.

Senator LEONARD: Are all these commissioners on a whole time basis?

Mr. BALDWIN: Yes, sir.

The ACTING CHAIRMAN: Any further questions? Shall section 14 carry?



Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 15, duties of the commission.

Senator PHILLIPS: I have a number of questions, Mr. Chairman, which I think should be directed to the minister.

The ACTING CHAIRMAN: Shall section 15 stand?

Senator ARGUE: Mr. Chairman, I wonder if it would be possible under this section for the commission to inquire into the matter which Senator McDonald raised in the chamber the other day, namely, the efficiency of the elevator handling facilities along the way? Is that sufficiently associated with the railroad for an inquiry to be made?

Mr. BALDWIN: Yes, I would consider it as part of a transportation system, and my interpretation would be that the answer would be yes.

Senator ARGUE: You would not know whether there is any thinking that such an inquiry, study, might be made soon?

Mr. BALDWIN: I could not say soon, in answer to your question. This would be a matter for the commission. But in our preliminary review when we were building up the existing research branch this was one of the items we had listed as meriting attention.

Senator BROOKS: But as I understood Senator McDonald's answer the other day these elevators are outside transportation altogether and are something separate and apart. Now, under this bill on transportation does this review board of research have the right to investigate the elevators and say to the companies, "You have to change your elevators"?

Mr. BALDWIN: It would not have the right to order the elevator companies to do this or that. Its involvement in the elevators, as I see it, would stem from the fact that it would start looking at the railways; and the efficiency of the railways in a given situation may depend upon loading and handling facilities available.

Senator PEARSON: In other words look to the efficiency of the elevators to see how efficient the railways are?

Mr. BALDWIN: You cannot apply a hard and fast rule to that sort of thing.

Senator ISNOR: Would you care to comment on section 15(d), particularly with relation to control over rates and tariffs? I have in mind Newfoundland the Maritimes. In the Atlantic region there is not the same competition by truck that they have in central Canada. What would be the control with regard to fixing rates in those regions?

Mr. BALDWIN: With regard to trucking, of course, nothing at the present time, because as will be indicated when we come to Part III on roads, I believe, this is not something which the federal Government has as yet intervened in, and no decision has as yet been taken as to when it would intervene in this field. This is a mandatory clause to make it clear that the commission would be in a position to exercise control over rates in a specific case where required as a result of governmental or parliamentary action not otherwise covered in the present statute.

Senator ISNOR: Let us forget trucking for a moment, and deal with two different lines of railway, namely, the C.N.R. and the C.P.R. You have competition there, and there is no question, you can compare the rates and make a decision. But in the other regions of Canada there is no competition by one railway against the other.

The ACTING CHAIRMAN: Senator, this really comes under Part V. However, we can go ahead with it now, if you wish.

Senator ISNOR: Well, it is a question of how you are going to control competition.

Mr. BALDWIN: Well, the basic philosophy with regard to railway rates comes under Part V, and the basic philosophy is that a competitive relationship should be the governing feature with respect to rates, and, therefore, you do not need rate control. A competitive relationship is defined not just as the existence of some other mode of transport, but alongside that it has to be an effective competitor. In other words, it must be able to cater to the same type of goods, and a type of goods that needs to be moved. The philosophy with respect to the control and regulation of rates in Part V is that competition is the most effective means of establishing the best rate for the shipper. I repeat the fact that effective competition means that the competitor must not just have a line of trucks or ships alongside the railway but he must actually be able to compete with the railway and carry the types of goods in question.

Where no effective competition exists then there are provisions for both a maximum rate which can be applied for, or for appeal in case the rate that is set, whether the maximum rate or any other rate, is considered ineffective. If the appeal is upheld then the new commission will have to compare the rates, and set a new rate. There is under all this a floor which requires that all rates be compensatory.

Senator ISNOR: I will ask this question when we come to deal with Part V, but I am concerned about that particular angle. As I stated, in business you have an opportunity of comparing the prices of your competitors. You are guided somewhat by their method of doing business, and you price your lines accordingly. I think in the Maritimes where we have no competition from a second line it is going to be more difficult for you to fix a rate.

Mr. BALDWIN: There is a formula for the establishment of a maximum rate, and this again you will find when we come to the appropriate clauses in Part V.

Senator ISNOR: Then, I will leave that.

The ACTING CHAIRMAN: Senator, we are standing this section for comment by the minister.

Senator HOLLETT: May I ask one question with respect to subsection (1)(a) which provides that the commission shall inquire into and report to the minister upon measures to assist in a sound economic development of the various modes of transport over which Parliament has jurisdiction. In reference to Newfoundland can you tell me if any report has been made with regard to the unsound economic condition of the Newfoundland Railways, and if any attempt is being made to build a wide track railway? Do you know anything about that?

Mr. BALDWIN: The wide-track railway has not been looked at for some time. It was looked at some years ago. The most effective look that we hope will be taken at the Newfoundland transportation problems will arise (a) from the section of Newfoundland which will be coming out in the Atlantic Transportation studies—the broad special study now under way—and (b) the work of the royal commission in Newfoundland itself that has been set up by the provincial government to look at transportation.

Senator HOLLETT: In other words, there is a hope?

Mr. BALDWIN: There is some work under way.

Senator BROOKS: As a matter of fact, I was going to wait until Part V came up, but the Atlantic provinces will not know until two years' time, after this investigation is over, just what consideration they are going to get in the matter of transportation rates?

Mr. BALDWIN: I would hope they would know much sooner than that because these studies are very far advanced.

Senator Brooks: They will not know until the studies are complete.

Mr. BALDWIN: But they are due to be completed in the next few weeks.

Senator SMITH (*Queens-Shelburne*): Are these studies which have been going on for some time being made by personnel of the Department of Transport?

Mr. BALDWIN: No, they are being made by consultants employed jointly by the Department of Transport and the Atlantic Development Board for this purpose.

Senator BROOKS: What are their terms of reference?

Mr. BALDWIN: To look at the broad transportation system of the four Atlantic provinces.

Senator BROOKS: What do you mean by "broad"?

Mr. BALDWIN: The fact that the report contains 14 different and substantial sections will mean that it covers quite a large area.

Senator BROOKS: It will need to.

Mr. BALDWIN: Yes.

Senator DESCHATELETS: There was one question that was raised in the Senate and which might be left for the minister. Supposing the report is not ready before the freeze expires, will the freeze then be extended? That was one question that was asked.

Mr. BALDWIN: That will be a question that would be better answered by the minister when he comes.

The ACTING CHAIRMAN: We are standing Section 15. Let us move on to section 16, the definition of "carrier" and the expression "public interest". Are there any questions on that?

Mr. BALDWIN: This is basically the broad appeal clause.

The ACTING CHAIRMAN: As Mr. Baldwin says, this is really the broad appeal clause. Are there any questions?

Senator BROOKS: This has to do with parity, has it not?

Mr. BALDWIN: It covers rates generally. Any aspect of rates would be covered by this.

Senator BROOKS: Would you explain the situation with reference to the Atlantic ports and the American ports, for instance, so far as parity is concerned?

Mr. BALDWIN: There is a provision within Part V that specifically preserves the existing statutory position in this regard.

Senator BROOKS: Then, I will leave that.

The Acting CHAIRMAN: Does section 16 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 17. This provides for the different committees of the commission. I take it that the members of these various commissions who become members of the commission that is set up here will be on these different committees on which they have worked?

Mr. BALDWIN: Yes.

The Acting CHAIRMAN: Are there any questions in respect of section 17?

Senator THORVALDSON: Yes, Mr. Chairman. I would like Mr. Baldwin to tell us how much study has been made by the Department of interprovincial motor vehicle transport. Might I ask also if it is the intention of the department to assume jurisdiction over this mode of transport?

Mr. BALDWIN: Well, I assume you are referring to the economic regulation of the commercial activities rather than automotive safety?

Senator THORVALDSON: Yes, I am referring to commercial traffic carried interprovincially by buses and trucks.



Mr. BALDWIN: Resulting from representations received from certain provincial governments and from the Canadian Trucking Associations, departmental officials have had a series of informal discussions with several of the provinces. We have not completed the plan to consult informally with every province in regard to these matters largely because the officials who were concerned with that were also concerned with this bill, which has taken up quite a lot of time since September, as you know. The plan is to complete this series of consultations before making any report or recommendation to the Government regarding the role of the federal Government in that economic regulatory field. However, provision is made in Part III for a role in this field to be played by the Government, largely because of a series of lacunae or gaps which have appeared in the existing situation under the existing federal Motor Vehicles Transport Act which delegates the responsibility to the provinces. About all I can say is that the minister has on several occasions in the house committee and in the committee of the whole in the House of Commons, indicated that Part III is there as a standby Part for possible use. Something undoubtedly is going to have to be done to close some of the existing gaps in legislation, and to achieve a more national position, but nothing will be done without full consultation with the provincial governments concerned. In any case, the plan would be to make attempts to see if anything at all should be done—I am not saying “would be done” but “should be done”—to make as much possible use of the existing provincial entities which already have experience and competence in this field. Does that help you?

Senator THORVALDSON: Yes, thank you very much. I would ask one more question in regard to that. You made a statement that rather surprised me. You said “if the Government decides anything should be done”. I had taken it for granted that the federal Government would assume jurisdiction in due course. I was going to ask you if you could give any indication as to when that might happen. Would that be a matter of months or years?

Mr. BALDWIN: It is a rather complicated matter, sir. We must complete the consultations with the provinces and report to the Government, which will have to take a policy decision on that. I would hate to prophesy, but it will not happen over night. It is too complicated for that.

Senator BROOKS: Perhaps I might ask this question, Mr. Baldwin. In the matter of competition between the trucks and the railways we know that the railways have to build their lines and, of course, that is part of the big cost. As far as trucks are concerned they use the roads of the different provinces. How do they determine their share of road costs as compared to determining the cost to the railways of building their lines? How is that worked out?

Mr. BALDWIN: Well, there are charges imposed by the provincial governments, of course, which are responsible for providing the roads. There is considerable argument, varying from province to province, and from economy to economy, as to whether the present scale of charges in effect do recover the costs. I may say that under clause 15, which was studied, you will find a couple of subsections referring to the importance of this very problem that you have mentioned as being one of the major research tasks which I think the new commission will have to look at, the basic cost-revenue relationship across all transport. The reason is that we do not know enough about this, but we suspect there may be imbalance between them in this regard.

Senator BROOKS: We know of the competition that has existed in Ontario between road transport and the railways. How does it work out there?

Mr. BALDWIN: The competitive relationship there is very keen, but I would not want to make any comment without more information as to whether the charges that the Ontario Government levies on the truckers means that they are paying a fair share of transport expenditures.



Senator ISNOR: Mr. Baldwin, you mentioned a moment ago that certain provinces had already been consulted. Will you tell us which provinces have been consulted?

Mr. BALDWIN: Mr. Cope, you could perhaps mention them. We have had to postpone some of the discussion because of the consideration of the bill.

Mr. COPE: We have completed discussions with the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, and Newfoundland.

Senator LEFRANCOIS: Sir, is it not a fact that before the introduction of the measure, the provinces were made aware of the various topics in the legislation and they were invited to present briefs? Am I right in assuming that eight out of the ten provinces have presented some briefs or have made representations? I would like to know what two provinces did not.

Mr. BALDWIN: You refer to briefs submitted to the Standing Committee on Transport and Communications of the House of Commons?

Senator LEFRANCOIS: Yes.

Mr. BALDWIN: The two provinces were Ontario and Quebec; the others did not in every case submit briefs directly. The Atlantic provinces came in with a joint brief under the Maritime Transportation Commission.

Senator McDONALD: In answer to an earlier question, Mr. Baldwin, you said that the provinces levied certain charges on trucking firms. Were you referring to licence fees and gasoline taxes?

Mr. BALDWIN: Yes.

Senator THORVALDSON: Mr. Baldwin, in regard to section 17(3), relating to the National Energy Board Act, I wonder if you would give a brief resume as to the powers of the National Energy Board and whether they will extend at all to what you referred to as commodity pipelines.

Mr. BALDWIN: Speaking briefly without reference to an extensive series of subsections, the plan would be that where technical or safety standards are involved it would not be intended that the new commission would attempt to get into this field. The National Energy Board has already dealt with technical and safety standards, and the new commission would be expected to rely on them for this type of operation regardless of the nature of the pipeline.

If the pipeline carries commodities that have no relationship to hydrocarbons—which, in the simplest form, are oil and gas—it will be solely under the jurisdiction of the new commission from the point of view of licensing and economic regulation. If it carries only oil and gas it will be solely under the jurisdiction of the existing National Energy Board. However, if they happen to be what are called combined pipelines, designed to carry both oil and gas and commodities other than those, provision is made for consultation between the two agencies, the National Energy Board and the new commission. There will be joint procedures, joint hearings, and a joint report to the Governor in Council, which will make any final decision.

Senator THORVALDSON: Is there any commodity pipeline in existence in Canada now?

Mr. BALDWIN: On an interprovincial basis, I do not think so.

Mr. COPE: I think there are six commodity pipelines in Canada, but the longest is some 22 miles in length. It is in Alberta. I believe there is an 18-mile commodity pipeline in Ontario, running from Creighton Mine to Copper Cliff.

Senator THORVALDSON: Generally, what commodities would they carry?

Mr. COPE: The one in Ontario carries copper concentrates or something of that nature, and in Alberta the commodity pipeline carries hydrogen sulphide, which is carried in a natural gas medium.

The CHAIRMAN: Shall section 17 carry?

Senator McDONALD: Mr. Baldwin, can you visualize the Motor Vehicle Transport Committee being charged with the responsibility of issuing licenses for certain interprovincial or across-the-nation trucking routes?

Mr. BALDWIN: Yes, if Part III is brought in by the Governor in Council. It sets up economic procedures which could be applied to interprovincial and international trucking.

Senator McDONALD: Would they be licensed with a federal licence as such?

Mr. BALDWIN: This is a detail which would have to be left to the Motor Vehicle-Transport Committee and the new commission to develop, if Part III is proclaimed. It would have to be worked out in close co-operation with provincial entities in order to avoid conflict.

The ACTING CHAIRMAN: Shall section 17 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 18, which is the provision for appeal. Shall this section carry?

Senator LEONARD: Is this similar to the present provision where the appeal lies to the minister from a decision with respect to an application for a licence?

Mr. BALDWIN: The principles in this section were lifted from the Aeronautics Act. Basically they are the principles established originally in the Aeronautics Act, and revised and approved by Parliament last spring.

Senator LEONARD: What is the present situation before this bill comes into operation with respect to a licence under the Transport Act to engage in transport by water?

Mr. BALDWIN: I do not think there is one. Mr. Fortier, the counsel for our department, has just informed me that the appeal to the Governor in Council under the provision of the Transport Act remains effective. It is not touched.

The ACTING CHAIRMAN: Are there any other questions with respect to section 18?

Senator LEONARD: Section 18(1) seems to indicate that the appeal is to the minister under the Transport Act.

Mr. BALDWIN: This is only in regard to the issuance of licenses. We found in an earlier draft of the bill where we tried to absorb as much as possible of existing statutes and not bring in anything new, that in the end result we came out with widely different types of appeals, depending on the mode of transport. This is an attempt to provide uniformity across the board for any appeal with respect to any mode of transport if it happens to relate to the function of licensing, so that there is no discrimination between modes of transport.

Senator THORVALDSON: Does this change the present law or does an appeal exist at the present time to the minister in regard to these licensing provisions?

Mr. BALDWIN: It now exists, Senator Thorvaldson, in regard to the Aeronautics Act. It does not exist in regard to motor vehicle undertakings. It is new with regard to the Transport Act, but we have not touched the appeal to the Governor in Council under the Transport Act. It would be new with regard to commodity pipe lines because again this is a new field of activity.

Senator PHILLIPS: Section 18(2) refers to cancellation of licenses. For what reasons would a licence be cancelled?

Mr. BALDWIN: I would have to think in terms of actual experience in the aviation field. One would be failure to carry out the service authorized. Another would be service that was not in accordance with the licence issued. A violation of board regulations in all these things would lead to cancellation. Normally the procedure followed by the Air Transport Board has been to give a "show or cause" and to use the suspension procedure if at all possible, cancellation being a last resort.

The ACTING CHAIRMAN: Shall section 18 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 19 deals with the matter of regulations. Shall section 19 carry?

Senator LEONARD: Where is the publicity with respect to these rules and regulations?

Mr. BALDWIN: They would be gazetted.

Senator THORVALDSON: Is there a provision for this?

Mr. BALDWIN: This is in the Regulations Act as applying to all regulations made.

The ACTING CHAIRMAN: Shall section 19 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 20, dealing with the question of acquisition or takeover. Are there any questions?

Senator THORVALDSON: Takeover by whom?

Mr. BALDWIN: By another mode of transport.

Senator HOLLETT: Is "pipeline" defined in this act?

Mr. BALDWIN: Yes.

Senator HOLLETT: Does it include the transport of electric power?

Mr. BALDWIN: No.

Senator PEARSON: No withholding company, as such, can acquire a transportation system, can it?

Mr. BALDWIN: Yes. I believe there are some now that operate in the transport field. They are not broad holding companies of other activities, but there are cases where one or two transport companies are owned by a single holding company.

The ACTING CHAIRMAN: The operating companies in those cases would be subsidiaries of the holding company.

Mr. BALDWIN: That is correct.

Senator PEARSON: The holding company, then, would be the licensee?

Mr. BALDWIN: No, normally the operating company would be the licensee.

The ACTING CHAIRMAN: I notice the language here, Senator Pearson, that "a railway company, commodity pipeline company, company engaged in water transportation, or person operating a motor vehicle undertaking or...carrier" rather points to the fact that the company which is going to be engaged in the acquisition would have to be an operating company rather than a holding company.

Mr. BALDWIN: This is true, but the phraseology also includes the words "directly or indirectly."

Senator PEARSON: I do not know—

The ACTING CHAIRMAN: Yes, they have the words "directly or indirectly" there. I would think, if you have a holding company with a series of operating companies, the combination of the two of them would qualify for further acquisitions.

Mr. BALDWIN: It would bring them under the purview of this clause.

The ACTING CHAIRMAN: Yes, under section 20. Are there any questions on section 20?

Senator THORVALDSON: I notice in subsection (3) the words:

Any person affected by a proposed acquisition referred to in subsection (1) or any association or other body representing carriers or transportation undertakings affected by such acquisitions may...object...



and so on. Is that not pretty wide, or is that that standard language in regard to these things?

Mr. BALDWIN: It is pretty wide, but we did not feel we should restrict the right to have the question brought before the commission. The commission has the discretion to decide whether a *prima facie* case has been made or whether the question should be gone into more deeply.

Senator THORVALDSON: Well, a person could object to any acquisition.

Mr. BALDWIN: He has to demonstrate that he has been affected by the proposed acquisition.

Senator THORVALDSON: At any rate, he would have an argument.

The ACTING CHAIRMAN: He might have his half hour before the Board, if he were a crank.

Shall section 20 carry?

Senator BURCHILL: Is there any appeal from the decision of the commission?

Mr. BALDWIN: Well, yes, there are several appeal clauses. Clause 18, for example, is one.

Senator BURCHILL: I mean in this particular section, where an objection has been made.

Mr. BALDWIN: Yes, I would think that this would fall under the general appeal to the Governor in Council which remains in the basic Railway Act.

The ACTING CHAIRMAN: Is section 20 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 21 deals with the annual report to the Governor in Council.

Senator BROOKS: I wonder if Mr. Baldwin will explain that section?

The ACTING CHAIRMAN: Section 21?

Senator BROOKS: Yes.

Mr. BALDWIN: Sir, this is a provision to ensure that the commission will, annually, within a specified time, make public in effect what it has been doing during the previous year so that there can be appropriate examination by Parliamentary committee, in whatever manner may be required, and so that the public will also know what has been going on. It is as simple as that.

The ACTING CHAIRMAN: Section 21?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Now, we come to Part II. I am sending a note to the minister. He should be here within the next ten minutes. In the meantime, we should be able to carry on with Part II. It does not seem to be very heavy. I deals with commodity pipelines.

Dealing with section 22, are there any questions? This is a definition section.

Senator BROOKS: Are "combined pipelines" different in character from "commodity pipelines"? We all realize that gas, for example, could not be carried by anything other than a pipeline; but would that apply to oil as well?

The ACTING CHAIRMAN: A "combined pipeline" is defined as a commodity pipeline through which oil and gas, or either, can be moved. So a combined pipeline is a commodity pipeline.

Senator BROOKS: And if oil is being moved by it, then, it comes under "commodity pipeline," too?

Mr. BALDWIN: No, if it was moving only oil, it would come under the National Energy Board, as at present.

Senator BROOKS: That, of course, is in competition with the railways as well?



Mr. BALDWIN: It could be.

Senator BROOKS: I was wondering why the exception was made.

Mr. BALDWIN: I think the answer is that the National Energy Board is functioning at the present time, and it is not desired to intervene in its present workings.

Senator BROOKS: It is functioning satisfactorily at present?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: Are there any other questions on section 22?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 23.

Senator BURCHILL: Pardon me, but what does subsection (1) of section 23 mean?

No person, other than a company, shall construct or operate a commodity pipeline to which this Act applies.

What does that mean?

Mr. BALDWIN: This is to ensure—as I understand it, Mr. Fortier—that the licensee must have a charter from Parliament. Is this not correct?

Mr. COPE: It refers back to the top of the page.

Mr. BALDWIN: Yes, it refers to the top of page 15, to the words “named in an Act of the Parliament of Canada.”

The ACTING CHAIRMAN: Well, that is in the definition of “company”, yes.

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: Are there any questions on section 23?

Senator ISNOR: Senator Burchill, you are questioning the two words “no person”?

Senator BURCHILL: It says “no person, other than a company.” I was wondering if a pipeline company means a person.

Mr. COPE: It is a specific kind of person.

Mr. BURCHILL: It takes a lawyer to understand that.

The ACTING CHAIRMAN: Well, no matter what you might say, you need lawyers nowadays. Is section 23 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 24 deals with operation of lines.

Senator PEARSON: A company could not build a pipeline before it was a certified company, could it?

Mr. BALDWIN: No.

Senator PEARSON: Then, why have that first subsection, “no company shall operate a commodity pipeline unless there is a certificate in force with respect to that pipeline”? They cannot operate the pipeline unless they build it.

Mr. BALDWIN: This is to provide for "grandfather rights" in case any commodity pipeline is in existence at the time this Part is proclaimed. In other words, you cannot put a company out of business that happens to be in existence when you bring a new system of regulations into effect.

The ACTING CHAIRMAN: Is the section carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 25 deals with the issuance of certificates. This is really the basis on which they must look at these applications.

Mr. BALDWIN: That is correct, sir.

The ACTING CHAIRMAN: It is the basis for issuing the certificates. Are there any questions?

Senator THORVALDSON: Does that mean that the new commission will have to issue a certificate for every line that operates now?

Mr. BALDWIN: Only if it is interprovincial or international in character, and at the present time there just do not happen to be any of these. Whether there might be one in existence by the time Part II is proclaimed, I do not know. We only know of one under consideration at the present time, and that is a combined pipeline.

Senator KINLEY: Will pipeline companies have to come to Parliament?

Mr. BALDWIN: A pipeline company will have to come to Parliament before it goes to the commission.

Senator KINLEY: The commission cannot grant the franchise?

The ACTING CHAIRMAN: It would have to come to Parliament first. Is 25 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 26 is on tolls and tariffs.

Senator PEARSON: These tolls and tariffs are all in existence at the present time?

Mr. BALDWIN: Yes.

Senator PEARSON: A new group will carry on under the present schedule?

Mr. BALDWIN: In so far as pipelines that might now be in existence under the jurisdiction of the Energy Board, yes.

Senator BURCHILL: Pardon me, but on section 26, in the case of a company operating a commodity pipeline, I have in mind blowing chips a distance of some miles to a plant where it might all be within the operations of the same company would they be obliged to get a rate from the commission?

Mr. BALDWIN: They could be exempted, if it was a purely internal company operation. The purpose basically in the legislation is to deal with the so-called "common carrier" pipeline that offers service to the general public, not just doing the business of the owner company.

The ACTING CHAIRMAN: I think the test is public interest.

Mr. BALDWIN: That is correct, sir.

Senator THORVALDSON: I have one other question. Subsection 2 of section 26 says:

- (2) a company operating a combined pipeline shall not charge toll except tolls specified in a tariff that has been approved by and filed with both the Commission and the National Energy Board and is in effect.

Now, that seems to tie up both of them in this question of tolls. What is the reason for that?

Mr. BALDWIN: This again is to permit tolls dealing with oil and gas to remain within the jurisdiction of the National Energy Board.

The ACTING CHAIRMAN: Is section 26 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 27. Now, we come to the application of the National Energy Board Act. Would you care to anticipate and say something on that, Mr. Baldwin?

Mr. COPE: I think I will speak on this one. This is just to say that the commission has certain powers that the National Energy Board has, which are specified in the National Energy Board Act, without the necessity of repeating them here in order to give the commission the same kind of powers.

Senator PEARSON: The National Energy Board came into effect when?

The ACTING CHAIRMAN: I think it was 1959 or thereabouts.

Mr. BALDWIN: About that time, yes.

Senator HOLLETT: Has the National Energy Board control over the transmission of electrical power?

Mr. BALDWIN: No, sir.

Senator HOLLETT: Well, who has control over it?

Mr. BALDWIN: The control of electrical power would be a provincial problem.

Mr. J. Fortier, Director, Legal Services, Department of Transport: The National Energy Board Act applies exclusively to the transport of hydrocarbons. The other matter comes under provincial legislation.

The ACTING CHAIRMAN: Who deals with licences to export power?

Mr. BALDWIN: The Minister of Energy and Resources would be the minister, but I am not sure of the statute, sir.

The ACTING CHAIRMAN: I had an idea that it was under the same act, the National Energy Board Act.

Mr. COPE: That act was enacted in July, 1959.

Mr. BALKWIN: I am sorry, sir. You are correct. The Energy Board also deals with the export of power, as the chairman said.

The ACTING CHAIRMAN: Shall this section carry, or are there any other questions?

Senator PEARSON: Subsection (1) states:

The commission has and shall exercise in respect of a commodity pipeline company and its works and undertakings the like jurisdiction, duties and powers as are vested in or exercisable by the National Energy Board under Parts III and V of the National Energy Board Act—  
etcetera—

Mr. BALDWIN: This is really to avoid repeating in this bill a miscellaneous series of clauses in the National Energy Board Act which give powers to the board in regard to procedures. This is only to give the new commission similar powers to those the Energy Board now has without redefining them in great detail in the present act.

Senator THORVALDSON: In other words, the procedural problems in regard to commodity pipelines are identical with those of others?

Mr. BALDWIN: That is correct, sir.

The Acting CHAIRMAN: There is no possible way in which there might be conflict as between the exercise of those powers by the National Energy Board and the commission?



Mr. BALDWIN: We do not believe so. These clauses were prepared after close consultation with the department and the National Energy Board to avoid that possibility.

The Acting CHAIRMAN: I mean, the areas of authority—

Mr. BALDWIN: Have been defined with this in mind.

The Acting CHAIRMAN: Shall section 27 carry?

Hon. SENATORS: Carried.

The Acting CHAIRMAN: For the purposes of the record may I announce that the Honourable Mr. Pickersgill, the Minister of Transport, has now arrived. Mr. Minister, we stood two sections for comment by you, and before we expose you generally to questions, I wonder if you would address yourself to those sections.

Mr. BALDWIN: Sections 1, 6 and 15.

The Acting CHAIRMAN: Section 1 is the question of policy.

**The Honourable John W. Pickersgill, Minister of Transport:** Mr. Chairman and honourable senators: I am really fairly well at home in the House of Commons but I always approach a Senate committee with the greatest trepidation, because I know that while senators are never rude—and that cannot always be said for members in our House, including me—they are often very penetrating, and for that reason I will speak with a good deal of hesitation this morning.

I do think that the essence of the legislation is to be found in clause 1. Perhaps I should say in that context, sir, just one word, if this will not go into too broad a field, about the evolution of the bill.

It was originally intended by the present Government—and I should not interpret the minds of the previous administration, but I think evidence in the file suggested it was also their intention—to introduce some very substantial amendments to the Railway Act based upon the report of the MacPherson Commission. In fact, in 1964 I did introduce in our House a bill which was subsequently killed by one of our colleagues so that the subject matter could go to a committee, where there was a very extensive consideration of it. Meanwhile, a lot of consideration had been given in our department and elsewhere and by certain of the ministers to the whole approach to this problem. I came to the conclusion as a result of all these discussions, and got my colleagues in the Cabinet to go along with me, that we should make a much more radical approach to this whole problem. It was evident that so long as we had the great disparities of geography and wealth in this country we were bound to have to spend a lot of the taxpayers' money providing transport and, that it was very important that that burden upon the whole community should be kept to a minimum. The conclusion was that the only likelihood of keeping it to a minimum was to have all forms of transport under the purview of a body which would at any rate advise the Government as to these public expenditures; that so long as you have the Air Transport Board dealing with one mode of transportation and the Board of Transportation Commissioners another, and really very little regulation or consideration of Maritime transport in relation to the other forms, and some subsidies in the Maritime transport field that were perhaps more historic than economic, there was bound to be a lack of co-ordination and probably therefore a waste of public funds and less efficient transport than would be provided if there was somebody that looked at all these things together. We concluded that what was really essential if we were to carry out the recommendations of the MacPherson Commission was that there should be some integration and co-ordination of these activities; that in order to give to any body that should be entrusted with this function—and it was decided that we would suggest to Parliament that such a body be created and called the Canadian Transportation Commission—it was essential that one or two basic principles be



laid down as—if I may use a word I find rather distasteful but that is convenient—guidelines for the transport commission.

The ACTING CHAIRMAN: I wonder what they did before that word came along?

Hon. Mr. PICKERSGILL: I think we used to call them by a Latin word "criteria," but I had a terrible experience in the House of Commons trying to define another Latin word for one of our most learned members who was a Ph.D., which I am not, and I would hesitate even more to use Latin words than English words. Guidelines and criteria seem to me to be pretty much alike, except that guidelines are English—and I do not know what the French translation of that is. Perhaps Senator Deschatelets can help me.

Senator DESCHATELETS: Garanties.

Hon. Mr. PICKERSGILL: Well, I do not want to get into the bicultural field, senator.

The ACTING CHAIRMAN: No; that is not before us.

Hon. Mr. PICKERSGILL: But I think that we have tried in clause 1 to set out three basic principles or guidelines which seemed to us to be most likely to ensure the best kind of results, if they could be followed, for the national economy.

The first of them (a) in clause 1 is taken directly from—I do not say the words, but the ideas—the MacPherson Report, that is, the notion that the maximum competition should be allowed in the field of transport between various modes of transport, consistent with certain basic protections for the public interest.

The second, (b) is that each mode of transportation should be expected to pay a fair proportion of the real costs of the resources, facilities and services provided that mode of transport, at public expense. Those will always be a subject of controversy and probably of quite bitter controversy.

I think honourable senators know that it does happen that one area of transport is excluded from this bill entirely, and that is the St. Lawrence Seaway. I think therefore that it is a useful example. I think there is a very sharp difference of opinion in the country as to whether the users or the taxpayers should pay for the St. Lawrence Seaway. I do not want to lead honourable senators into that area because it is strictly extraneous to the bill, but it is a very neat illustration of the point here.

Senator ISNOR: But the basis of this bill is that the users pay.

Hon. Mr. PICKERSGILL: It is the basis of the bill that the users pay wherever possible without extinguishing business that is essential to the national interest, or without extinguishing services to the population that are essential to the national interest.

The ACTING CHAIRMAN: Unless they are directed to provide a service?

Hon. Mr. PICKERSGILL: That is right.

Senator KINLEY: What do the Americans do in regard to the Seaway.

Hon. Mr. PICKERSGILL: We have an agreement with the Americans, and, of course, the agreement really carries out what I regard as the intent of our legislation. There is also a great controversy going on there. But, I do not think we ought to get into the Seaway, Senator Kinley, because that is strictly excluded from this bill. I picked it as the neatest illustration I could think of quickly. You can understand, Mr. Chairman, that I am thinking of a problem I am going to have to face.

Senator BROOKS: In other words, you mean that the commission will have no authority over the Seaway?

Hon. Mr. PICKERSGILL: No, it will have no authority over the Seaway. There is no reason, of course, intrinsically why it should not, but it seemed very cumbersome. The Seaway is an international waterway, and it is because of the relations between the two commissions that it seemed there would be needless duplication if it did.

Senator BROOKS: It will remain a government responsibility?

Hon. Mr. PICKERSGILL: Yes, essentially, because the Seaway Authority makes its report to the Government, and in the final analysis the government has to decide whether it is carrying out the intent of Parliament. I have my own ideas of what the intent—

Senator BROOKS: Of course, the ices floes are taking it over now.

Hon. Mr. PICKERSGILL: The Seaway?

Senator BROOKS: Not the Seaway, but the St. Lawrence.

Hon. Mr. PICKERSGILL: The St. Lawrence Ship Channel is a different matter entirely. It is just as much under this bill as any other part of our transportation system. In fact, the Seaway is the only thing I can think of in the field of transport under federal jurisdiction that is not comprehended in this bill. I cannot recall of any other exclusion.

Senator ISNOR: What about trucking in the various provinces. Why would not this bill include the St. Lawrence Seaway?

Hon. Mr. PICKERSGILL: Well, it just seemed to me that Parliament has laid down a law that I think is very clear. I am not going to interpret it because I think, sir, it is beyond the scope of this bill, but I think the law under which the St. Lawrence Seaway was built is very clear. I think it gives a very clear direction to the Government of Canada, and I think that that direction was properly carried out in the agreement made with the United States. I feel I am bound as the minister answerable for the Seaway to carry out the will of Parliament until Parliament decides something different. I could not see that it would do anything but complicate things if it was brought within the purview of this bill.

The ACTING CHAIRMAN: In any event, it is not a subject matter before us.

Hon. Mr. PICKERSGILL: That is right.

The ACTING CHAIRMAN: So, let us get on.

Hon. Mr. PICKERSGILL: I am a little sorry that I used that illustration.

Senator HOLLETT: Mr. Chairman, before we leave that I would like to raise a question that I have already raised very briefly. Subsection (1) (d) reads:

each mode of transport so far as practicable carries traffic to or from any point in Canada under tolls and conditions that do not constitute—

et cetera. I would like to ask the Honourable Mr. Pickersgill if he has made a trip on the Newfoundland railway lately.

Hon. Mr. PICKERSGILL: Not lately.

Senator HOLLETT: I was wondering if there was a possibility that the reconstruction of that railway comes under this bill.

Hon. Mr. PICKERSGILL: No, the position with respect to the Newfoundland railway is that it was entrusted at Confederation to the Canadian National Railways, and they make the decision, subject, of course, to getting the necessary capital for carrying it out—

Senator HOLLETT: With the consent of the Government.

Hon. Mr. PICKERSGILL: I beg your pardon?

Senator HOLLETT: With the consent of the Government?

Hon. Mr. PICKERSGILL: Well, they have to get their capital.

Senator HOLLETT: Surely.

Hon. Mr. PICKERSGILL: Their duty is to make that railway as efficient as possible within the scope of the railway itself. It is not a notorious moneymaker for the Canadian National, but a tremendous amount of capital has been poured into it since Confederation, and it is, I think considering what it is asked to undertake, a relatively efficient railway.

Senator PHILLIPS: Mr. Chairman, I have several questions to direct to the minister. I am wondering if he would like to complete his statement first.

The ACTING CHAIRMAN: The minister is addressing himself to what is inherent in Section 1.

Hon. Mr. PICKERSGILL: If I may turn to the third principle, it is that each mode of transport so far as practicable should receive compensation for the resources, facilities and services that it is required to provide as an imposed public duty.

Now, this has been done, of course, in the case of subsidies for Maritime services of one kind and another ever since Confederation. It has been done almost not at all so far as air services are concerned, and it has not been done in any kind of a systematic way so far as the railways are concerned. This was another of the basic recommendations of the MacPherson Commission, namely, that one shipper should not be expected to pay for the losses incurred in carrying some other form of traffic. And if traffic was required to be carried at a loss on the railways that loss should be assessed properly and then borne by the whole community and not by another group of shippers.

Now, this is one of the basic principles on which the greater part of the bill relating to railways is founded. It is a concept which I believe will have very fruitful results. I think it is very desirable for us to know what the real consequences are of the various forms of activity carried on by these various carriers, to find out whether there are really losses in certain areas, and whether the losses are commensurate, if I may put it in that way, with the benefits to the community. If they are not I think we should get rid of the service. If the service is really essential then it seems to me that the community should pay for it, and not some other group of shippers.

Senator ISNOR: What do you mean by "community" in that context?

Hon. Mr. PICKERSGILL: I mean the Treasury of Canada. Then, paragraph (d) was added to the bill in the House of Commons—not even in the committee of the whole house but in the House itself—as a result of the very extensive debate that took place on clause 16. It really does complement a certain provision that we made in clause 16. I think it would be preferable to consider it in relation to clause 16 than on its own account.

It really is not a basic principle so much as an attempt to cover certain historic attitudes, or historic positions that we have taken with respect to transport in this country, with respect to both the relationship of rates to be charged one shipper as compared with another and the desirability of providing for the freest exchange of goods between one part of the country and another, and for the promotion of export trade which is so vital to our whole economy. I think that that perhaps is all I really have to say on clause 1.

The ACTING CHAIRMAN: Now, in respect of section 6, I think there are going to be some questions in connection with any plan in relation to the commission. Is that the purpose for which we are standing this?

Mr. BALDWIN: The distribution.

The ACTING CHAIRMAN: The distribution of the membership geographically, or something like that.

Hon. Mr. PICKERSGILL: I was wondering, Mr. Chairman, if there were any questions on Clause 1.



Senator SMITH (*Queens-Shelburne*): Yes, Mr. Chairman. What was the purpose of adding subclause (d)(ii) to clause 1 when the bill already contained the exact wording in clause 16(3)(a)(ii)? You have those words already on page 10 of the bill, and then we see them again in the general statement of purpose.

Hon. Mr. PICKERSGILL: This is a field in which I move only with reluctance because I am not a lawyer. Mr. Baldwin—not the Deputy Minister, but the member for Peace River—is a quite distinguished lawyer, in my humble opinion, and he raised a question about clause 16. He raised it before Christmas, and it troubled me a good deal. It was that it was one thing to establish a *prima facie* case and another thing to prove your case after the court had agreed to hear you, and that while we said if you establish a *prima facie* case there were conditions laid down which would show prejudice to the public interest, it was going to be very hard to determine what “public interest” really meant in establishing the *prima facie* case. Therefore, these expressions were put into clause 1 so that they would constitute a part, and only a part, of the definition of “public interest” which a shipper could allege in order to get a hearing.

Senator SMITH (*Queens-Shelburne*): Mr. Minister is section 1 (d) (ii) the policy statement on which we in the Atlantic region hang our hats to be assured that in the future we shall get what can generally be considered to be fair treatment in freight rates, and also in port activities?

Hon. Mr. PICKERSGILL: Yes, generally. In addition to that, clause 59 of the bill deals more specifically with this and perhaps I could speak to it when it comes before the committee.

Senator SMITH (*Queens-Shelburne*): But this is a statement of policy under which we hope we will not be injured and that our transportation difficulties will be overcome in the future.

Hon. Mr. PICKERSGILL: That is right.

Senator BROOKS: We have hopes but no assurance.

Hon. Mr. PICKERSGILL: Senator Brooks, the way I would put it is that they are the most ironclad assurances that can possibly be given of everything that now exists in the law. But, as you know, the MacPherson Commission decided to make its report without dealing with the particular problems of the Atlantic provinces, and without dealing with the effectiveness of the Maritime Freight Rates Assistance Act. They suggested that this should be the subject of a future inquiry. That inquiry is going on now, and, in fact, is very nearly completed. I am advised that we will have the reports of these consultants sometime in the next month or so. I explained in the House of Commons that we would try to deal with these things as fast as possible so that we could go on and provide more than hopes, additional advantages for the Atlantic provinces.

Senator BROOKS: Would that mean further amendments to the act?

Hon. Mr. PICKERSGILL: It might be by way of amendments to this act or to the Maritime Freight rates Assistance Act. It might not be, of course, by way of amendments to any act. It might be in the form of positive—

The ACTING CHAIRMAN: Legislation.

Hon. Mr. PICKERSGILL:—positive legislation in a new field altogether.

Senator BROOKS: Along the lines of the Maritime Freight Rates Act?

Hon. Mr. PICKERSGILL: You know that in the highway field the present Government has already secured from Parliament a vote of \$40 million to assist the highways in the Atlantic provinces. This has been done in the last four years, apart from the Trans-Canada Highway work, and that money is going to be spent. Now, I do not think it will do the job but—

Hon. Mr. BROOKS: Possibly we could get the Corridor Road.



Hon. Mr. PICKERSGILL: I am even more concerned in the building of roads in Canada than in the United States, including that great part of the Atlantic provinces which is bigger than all the rest put together, and I refer to Labrador.

Senator BROOKS: There is a road through British Columbia which connects one part of the United States with another.

Senator PHILLIPS: The minister has stated that the St. Lawrence Seaway is the only transport system not covered by this legislation. What is the situation with respect to what we used to call the Northumberland Causeway and which the minister, without the benefit of Latin, has called the "Northumberland Cross"?

Hon. Mr. PICKERSGILL: The rates which would be charged on the causeway, just as the rates which are now charged on the ferries, would be subject to the overall jurisdiction of the commission, as I interpret the law.

Senator THORVALDSON: I notice, Mr. Minister, that you did not attempt to explain the meaning of section 1(d) (i) and (ii). I was going to ask you whether it was a fair comment to make that there is no purpose in trying to explain the unexplainable? I find it very difficult to know what those sections mean.

Hon. Mr. PICKERSGILL: Well, I think I will let Senator Thorvaldson be the Delphic oracle, and I will not try to emulate him.

The ACTING CHAIRMAN: It strikes me that section 1(d) is part of a broad declaration of policy. There is no statutory authority in section 1. Section 1(d) is part of a broad declaration of policy. The statutory authority for what is in section 1(d) is to be found in section 16. That is where you get rights.

Hon. Mr. PICKERSGILL: That is right.

Senator KINLEY: Section 1(d)(ii) reads:

An undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports;

Does this bill restrict what I have read to transportation only, or does it take a wider view?

Hon. Mr. PICKERSGILL: I do not think it would be proper for the Minister of Transport to endeavour to usurp the functions of the Minister of Finance in advising the Government as to what tariffs there should be.

Senator KINLEY: I think this could be developed.

Hon. Mr. PICKERSGILL: Perhaps you should address your remarks to Mr. Sharp.

The ACTING CHAIRMAN: Well, one minister at a time. Now, there were some questions on section 6.

Senator ARGUE: I wonder if I could ask a general question on section 1. As I read the bill there is no provision in it for an advisory council.

Hon. Mr. PICKERSGILL: The deputy minister, Mr. Baldwin, reminds me that while there is no provision in the bill itself, the powers of the commission would appear to be wide enough to give them the right to set one up, or several if they wish to do so.

The ACTING CHAIRMAN: If you look at section 15 (4) on page 9 of the bill, under the marginal note "Consultation," you will see that there is authority for doing that sort of thing.

Senator ARGUE: As I understand it, there was a recommendation in the MacPherson Commission Report for the setting up of a formal advisory council. This was requested by some farm organizations, at least on the Prairies, who felt that the regional interests, both on the Prairies and in the Maritimes, should be

represented in an advisory capacity to this very important body of experts who will constitute the commission. I am just wondering why this was not followed?

Hon. Mr. PICKERSGILL: I do not think it was followed because it was felt that we should set up the commission first and have a little experience of its operations to see what would be the right kind of scope. The MacPherson Report did not envisage a commission of this kind. I must say, speaking for myself, there will be formidable problems in acquiring personnel for the commission. Then, in addition, there will be the problem of finding the right kind of personnel for an advisory council. I think this is something that should be tackled in two stages rather than all at once.

Senator BROOKS: I understand that when the commission is set up it will have on it personnel who are presently serving on the Air Transport Board, and so on. As these boards are presently constituted, are the various geographic sections of Canada well represented, and in the sense that they are going to be taken on in the new commission?

Hon. Mr. PICKERSGILL: I have not gone over their personnel because I knew they could not be changed anyway. I have not gone over them carefully to look at them from that point of view. However, from my knowledge of them, and without setting all their names down and their birthplaces and where they lived most of their lives, I do not think there is any region of the country which is not represented among the existing personnel, and certainly I would do that particular exercise before deciding what names I should suggest to my colleagues for additional members.

Senators BROOKS: Do you expect to get research personnel as well from the existing boards?

Hon. Mr. PICKERSGILL: I am sure that some of the employees of the boards would be on the research side, but I would doubt whether any of the present commissioners would be likely to be on the research side, although they might.

Senator PHILLIPS: What would you consider to be the necessary qualifications for the office of vice-president in charge of research?

Hon. Mr. PICKERSGILL: I would think he ought to be someone who had quite a long experience in the field of transport research, and that he ought to have had some academic training in that field as well.

Senator ISNOR: You have three or four appointments to make, have you not? There are 17 in the commission and there are 13 members now.

Mr. BALDWIN: There are 13 members. There are some vacancies, however.

Hon. Mr. PICKERSGILL: Mr. Baldwin says there are some vacancies.

The ACTING CHAIRMAN: All 13 positions are not represented by incumbents in office.

Hon. Mr. PICKERSGILL: There is only one member of the Maritime Commission, you see. There is only one full-time salaried member at the present time. There are one or two civil servants who are acting *ad hoc* as members of that commission, but they would not necessarily be on the new commission.

Senator ISNOR: Mr. Minister, I questioned your Deputy Minister, Mr. Baldwin, concerning section 8. Is there any doubt in your mind as to procuring the necessary men who are not in some way or other connected with the various enterprises?

Hon. Mr. PICKERSGILL: I think myself that there is always a problem, I quite grant you. I remember that we had the same problem, and there was quite a lot of discussion about it in the House of Commons in 1959, when the Broadcasting Act was enacted. The problem was whether the act was not really making sure that nobody who really knew anything about the subject could be appointed.

Senator ISNOR: Right.

Hon. Mr. PICKERSGILL: As against that I think we have to take what in our society, and at any rate in the federal field, is generally being accepted as a sound proposition that no one having a personal interest in the work of the commission would be a suitable person to be a member. But that does not mean, Senator ISNOR, that they could not divest themselves of their interest, and that perhaps, if they declared their interest, there might be some possibility of arranging that in an orderly fashion.

Senator ISNOR: It would be the same principle as applies to the minister himself.

Senator THORVALDSON: Mr. Chairman, I was wondering if the minister had concluded his general statement? If not, perhaps we could let him continue without any further questions.

The ACTING CHAIRMAN: I think we had gone on to section 6. We had dealt with section 1, which is a statement of policy. Section 6 we stood, because some of the senators wanted to ask questions and that is what is being done now.

Hon. Mr. PICKERSGILL: Yes. I had no general statement to make on section 6. I was just attempting to answer questions.

Senator PHILLIPS: I am a bit concerned about the relationship of the commission to Parliament. Briefly, I have always considered questions on C.B.C. to be rather ineffectual in Parliament, because the minister in charge says that she will refer the questions to the C.B.C. What would be the policy in this regard when a question is brought up in Parliament? I do not think the present minister would resort to this, but I can see the possibility of future ministers of transport taking this means to evade answering questions on transportation policy.

Hon. Mr. PICKERSGILL: I do not think I ever consciously evaded answering a question.

Senator PHILLIPS: That is why I made the exception.

Hon. Mr. PICKERSGILL: I have quite often declined to answer questions about things that were not my business, which I think is a very proper principle for anybody to hold in whatever sphere of life he is.

In so far as the commission is a court, just as the Board of Transport Commissioners and the Air Transport Board are courts, I think it would be wholly improper for a minister to answer any questions about their operations at all, except a question asking whether a hearing is going to be held on a certain date. I do not think one could properly take exception to that question, although I think it is rather a waste of time for the House of Commons or the Senate to ask that question. It is not improper for the minister to know that there is going to be a hearing on such and such a date, but if questions are going to be asked about how the commission is carrying out its judicial functions, it would be just as improper for the Minister of Transport to answer those questions as for the Minister of Justice to answer questions on what the Supreme Court is doing.

If you look at the other side of the commission, it will have research activities for which Parliament will be paying a certain amount of money every year. This is a very proper subject for Parliamentary inquiry and I think that a minister would be prepared to answer questions in this field, though I do not expect any minister would be capable of answering them without advice. Certainly I would not be, because I would not want to substitute myself for the people doing the research. I definitely think that this field is a very proper field for inquiry.

Senator BROOKS: How about the matter of freight rates? That of course will be the big bugbear as far as everybody is concerned.

Hon. Mr. PICKERSGILL: No minister should answer questions about that subject while it is under adjudication. I am sure you would agree with that, Senator Brooks. Then, particularly as the minister is a member of the Cabinet



which can hear appeals in these matters, that creates a double reason why it would be wholly improper for a minister to answer any questions about these things until the Governor in Council, if it comes to the Governor in Council, has reached a determination. Then, of course, as the minister he is responsible to the House of Commons and it would be very improper if he did not answer questions.

Senator BROOKS: According to that statement, then, the research branch of the commission will determine whether an objection on freight rates in a certain part of the country is unfair.

Hon. Mr. PICKERSGILL: The research side will have nothing to do with the determination of freight rates. That will be entirely on the regulatory side.

Senator BROOKS: Will not freight rates be based on some of the information gained through research?

Hon. Mr. PICKERSGILL: It might be that the commissioners would ask the research people to find them the answers to certain stated questions. But it was emphasized in our special committee in the House of Commons by representatives of the railways and by other interested parties on the other side that they did not think the research people should be mixed up in any way with the regulatory side. I quite agree with that view.

On the regulatory side you have a court and it has to behave like a court, but that does not mean that they should not have access to factual information in order to make their determinations. But I do not think they should attempt to transfer the problem to the research side.

After all, these regulatory problems have to be settled on the basis, I would guess, of the facts as they are now, and the research people are mostly going to be concerned not with what the situation is now but with what can be done to improve transport and develop it for the future.

The ACTING CHAIRMAN: Are there any other questions?

Senator BROOKS: Any redress, then, would have to come on appeal through the courts, so called?

Hon. Mr. PICKERSGILL: There is an appeal. You see, it is a rather complicated system of reviews and appeals, but the basic appeals are the same as they are in the law now. There is an appeal to the Governor in Council on matters of fact, and to the courts on matters of law.

Senator DESCHATELETS: For example, you have the Railway Act.

Hon. Mr. PICKERSGILL: Yes.

The ACTING CHAIRMAN: Shall section 6 now carry? We have covered 6.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We stood section 15. We have been listening to the minister and he has been dealing with various parts of section 15 having to do with the duties of the commission.

Senator PHILLIPS: The minister stated that the Northumberland crossing will be included under the bill. I wondered if under section 15 he could give me some idea of what the policy will be in establishing rates.

Hon. Mr. PICKERSGILL: Well, that is what we call in the House of Commons, Senator Phillips, a hypothetical question.

Senator PHILLIPS: It is not hypothetical; it is very important.

Hon. Mr. PICKERSGILL: Really, you know, I feel very young and strong, but I have some doubt whether I will be the Minister of Transport who has to deal with that problem.

The ACTING CHAIRMAN: Are there any other questions?



Senator PHILLIPS: I would like to have some rough outline of what would be followed, rather than just saying it will be left to a new minister of transport. I might not have the same faith in the new minister as I have in the present one.

Hon. Mr. PICKERSGILL: The plain fact is that the crossing has not been built yet. There will be at least one Parliament elected before it can possibly be built, and it is quite conceivable that there will have to be special legislation dealing with this matter and, quite honestly, I just do not know what the people who will have to deal with this problem will have to do. Although the job is being done by the Minister of Public Works, I am mainly concerned with seeing that it is built, and built as quickly as possible, because I recommended this project very strongly to my colleagues in the Government. I believe it was a cheaper and much more effective way of providing transportation to Prince Edward Island than by building more and more ships that still could never carry all the traffic.

But as to what regime there will be when the causeway is completed, the present Government has not addressed itself up to now to that question and, therefore, there is no answer I can give.

Senator DESCHATELETS: Mr. Minister, if the rates that are going to be set some day are found to be detrimental to the Atlantic provinces, then an appeal could be entered at any time?

Hon. Mr. PICKERSGILL: Oh, yes. I think I can go so far as to say it is assumed that there will be some tolls on the causeway. It will not be free. I think everybody has assumed that, although I am not absolutely sure that any government has ever stated it categorically.

Senator PHILLIPS: It has been a subject which has been avoided. I will agree with you there.

Hon. Mr. PICKERSGILL: I think the assumption has always been that there would be.

The ACTING CHAIRMAN: Any other questions on section 15?

Senator ISNOR: Yes. Mr. Minister, you were good enough to deal with paragraph (d) of section 15. I was concerned about the control over rates and tariffs, particularly in the Maritimes where we do not have the same competition between trucking and rail rates. Would you care to give us your views, or comment on that section?

Hon. Mr. PICKERSGILL: Without looking at the specific sections with regard to rates in the Railway Act, I am not sure that it would be easy for me to make any very intelligent comment on the basis of this particular clause, Senator Isnor.

Senator ISNOR: Coming from the Maritime provinces I am concerned with the rates that will go into effect in Ontario and Quebec. There will be real competition between trucking and the railways—I say “railways” because I refer to the two of them.

Hon. Mr. PICKERSGILL: You understand, of course, senator, that under this bill as it is now before you the freeze on rates put on in 1959 is going to be continued for two years.

Senator ISNOR: Yes.

Hon. Mr. PICKERSGILL: And during that time it is anticipated that as a result of these Atlantic studies other measures will be recommended to Parliament to deal with this subject, and it was felt that without the kind of advice in other fields that was given by the MacPherson Commission it would not be possible to legislate at this time about this matter. The only area in which the freeze is not carried on is in this less-than-carload lot and express business. I was convinced, and succeeded in convincing the House of Commons, that it was on balance better for the Atlantic provinces to have those rates free from control except for minimum and maximum, and to get the advantages of the more modern methods

and greater speed and so on, and the incentives to improve, than to freeze the rates which would apply to less-than-carload lots and would not apply to express, and would probably decelerate instead of accelerate the improvements and service. Speaking as someone who has spent a lot of time in Newfoundland, I know that many people have spent vast sums shipping goods by air freight because the other service is not good enough, and it was represented to us that it was apt to be improved if it was free from control. But apart from that, the situation in respect to these rates is not going to change at all for two years unless Parliament decides to change it.

Senator ISNOR: You speak of the freeze on freight rates. There has been a very marked increase in express charges from Central Canada to the Maritimes.

Hon. Mr. PICKERSGILL: The express rates were never frozen, of course.

The ACTING CHAIRMAN: Senator Phillips?

Senator PHILLIPS: Section 15(g) speaks of "desirable financial returns." Could someone give me an indication of what the Government considers a desirable financial return on its investment in equipment?

Hon. Mr. PICKERSGILL: I think this refers only to federal investment; it does not refer to the return of any carrier who provides his own equipment.

Senator PHILLIPS: I know, but what does the federal Government consider a desirable financial return?

Hon. Mr. PICKERSGILL: I think the federal Government has never made a determination of that. This bill specifically says it shall be the duty of the commission to do so, and I do not think that it means desirable financial return in all the varying circumstances that might arise. Each case would have to be looked at by the commission on its individual merits.

The ACTING CHAIRMAN: Any other questions, on section 15?

Senator BROOKS: Yes, I have a question. You say that the rates in the Atlantic provinces are under freeze for the next two years possibly; and the rest of Canada will have more or less a compensatory rate. Would the compensatory rates apply automatically to the Atlantic provinces after those two years?

Hon. Mr. PICKERSGILL: Not in all cases. Perhaps when we come to clause 59 we could discuss that, because I think it is much more relevant.

Senator BROOKS: As you know, that is what is worrying the people in the Atlantic provinces at the present time.

Hon. Mr. PICKERSGILL: Yes.

The ACTING CHAIRMAN: Senator Argue?

Senator ARGUE: I wonder if the minister would have any idea, and I could understand it if he has not, whether at an early date a special advisory committee would be set up on which there would be representation from the Maritimes and the Prairies?

Hon. Mr. PICKERSGILL: This is pretty likely, but I would think that the commission would want to have at least six months to shake down and see what things were apt to come before it, before they would know about these other matters. My own feeling is that a national advisory committee is not going to be really meaningful. I think regional advisory committees could deal with important regional problems, and perhaps advisory committees to deal with specific commodities—and there is one that Senator Argue will think of right away—are much more likely to be helpful than some broad body which would be really just an attempt to provide a feeble mirror of Parliament. I would rather have Parliament than a mirror of Parliament.

Senator KINLEY: I think the members of Parliament would be a pretty good example.

Hon. Mr. PICKERSGILL: Yes, exactly.

Senator ARGUE: Assuming the minister is correct that such committees would be set up perhaps within a six-month period, would he envisage that a committee, shall we say from the Prairie provinces, would be set up and functioning before any particular move or rapid move were made with relation to rail line abandonment? The minister will appreciate that this is a very controversial and important question.

Hon. Mr. PICKERSGILL: I appreciate that it is a controversial question and that if we are to get any advantage whatsoever from the legislation some of these things which have been frozen now for years have got to be dealt with. I gave an assurance in the Commons, and I think I should repeat it here since Senator Argue has brought it up at this point, that I would cause in one way or another, either through an order in council—I have the authority of my colleagues to say this—or a directive to the Board of Transport Commissioners, that they were to use the new procedures in considering any abandonments, even though the commission might not be established and the Board of Transport Commissioners might be dealing with these applications.

I said I did not think it was fair to ask the railways to start all over again and re-apply, with all the consequent delays, but that the hearings should be under the new procedures, not under the old. I think this is the way we would have to proceed, and it would be very undesirable to try at this stage to have still another delaying action; apart, of course, from the fact that this map is going to be passed by order in council, if that is the right instrument. However, the necessary legal step is going to be taken as soon as this bill passes to freeze all these lines in western Canada that are in orange on the map until January 1975, which is a pretty substantial guarantee. It seems to have been received pretty well in western Canada.

Senator ARGUE: Which then means, Mr. Chairman, that the railways will be proceeding as quickly as they are able to towards the abandonment of some or all of the lines?

Hon. Mr. PICKERSGILL: Yes, but I think the railways are going to be smart enough to take the obvious candidates in respect of which there will be relatively little argument first.

Senator ARGUE: Some of which they have already mentioned.

Hon. Mr. PICKERSGILL: Yes, but they will have to go through a rationalizing procedure. Some of them, of course, cannot be rationalized because they are stub ends. There is nothing to rationalize them with. If you look at the map you will see that there are other lines nearby, and I am sure there is going to be a lot of argument as to which lines should go before this is settled.

The ACTING CHAIRMAN: Shall Section 15 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We had got as far as Section 28 on page 18 when the minister came in. Section 28 simply provides an exemption under this Part II, exempting a commodity pipeline from all or any of the provisions of this act. Shall Section 28 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We come now to Part III. What is the wish of the committee, that we carry on from here section by section, reviewing each one with the minister, or do the members of the committee have questions which touch on any part of the bill from Part III on? If so, perhaps we should put those questions to the minister now, after which we can dispense with his services. In which way does the committee prefer to deal with it?

Senator SMITH (*Queens-Shelburne*): I think the latter way, Mr. Chairman.

The ACTING CHAIRMAN: Then, you are free game for questions on any part of the bill starting with Part III, Mr. Minister.



Hon. Mr. PICKERSGILL: Very well.

Senator ARGUE: With respect to this section dealing with rail line abandonment, after an investigation has been proceeded with as provided for on page 46 will the residents or organizations that are being affected have an opportunity to appear—I may not be asking this question correctly—before the commission makes the decision that in its view a line is losing money for the railway?

Hon. Mr. PICKERSGILL: Yes.

The ACTING CHAIRMAN: Are there any other questions on any parts of the bill? Section 59 has been mentioned here from time to time.

Senator PHILLIPS: I have a question with respect to Section 336(3) on page 47 which deals with the determination of variable cost, and also in respect of the costs of capital in paragraph (b). As I mentioned in my remarks, in reading the reports of the committee of the House of Commons and so on, you can come up with three figures. Does the minister have any preference as between the 11.4 per cent as claimed by the C.N.R. or the 5 per cent as recommended by the Transport Commission, or the 3.84 per cent as recommended by the MacPherson Commission? In other words, could we have some illustration of the cost of capital?

Hon. Mr. PICKERSGILL: Well, this is a subject on which my opinion, if I had one, would, I think, be quite worthless, because it requires a degree of expertise which I have never pretended to possess, and, to be quite honest, I hope I never have to possess. I do not think that anybody would value my opinion on it at all.

There was one other question that came up in the House of Commons and on which I thought there seemed to be a singular amount of misunderstanding and confusion, and that was the attribution of costs of capital as between variable costs and fixed costs. It seems to me that that is not at all a difficult idea to get through your head. I put it rather graphically, I thought, in the House when I said the capital cost on a freight car would be a variable cost, but the cost of a steel rail would be a fixed cost, and that in determining variable costs you could allow for the depreciation of the car, but not for the depreciation of the track. But, that is just giving it graphically. When you come to determine these things and put them through computers, and so on, I do not think my opinion would be worth anything.

Senator PHILLIPS: The commission will determine this point. Will they conduct any hearings, and so on?

Hon. Mr. PICKERSGILL: Yes, in determining the criteria for assessing costs there are to be public hearings. That is quite definitely provided for in the bill, and was insisted upon by many witnesses.

The ACTING CHAIRMAN: I think this is on pages 59 and 60.

Hon. Mr. PICKERSGILL: Yes.

The ACTING CHAIRMAN: Are there any other questions?

Senator SMITH (*Queens-Shelburne*): I have a question on Section 59. Is this a section which has a relation to any legislation which may result after the studies on the situation in the Atlantic provinces have been thoroughly gone into, and recommendations made to the Government? Any legislation which follows that would be put into effect, and rates enforced or behaviour enforced on the railway companies by the use of section 59? Is that a correct summary of that?

Hon. Mr. PICKERSGILL: No, I think the way I would put it is this, Senator Smith. Section 59 is designed to maintain every statutory rate or obligation, such as the routing of traffic, that now exists in any law.

We were told that there were about 1,200 acts of Parliament passed since Confederation having to do with railways, and we suppose that at least 1,150 of them would have no relevance, but any one of the other 50 might. I might have



picked any other figures so far as that goes. Nobody has yet searched through all of them. We are having a very exhaustive search made in the Department of Justice to see, but we thought we should put in this bill now an absolute safeguard in respect to every one of them so that there would be no doubt that the law that now exists with regard to rates to the Atlantic ports, and with regard to the routing of traffic to the Atlantic ports, was protected.

Senator SMITH (*Queen-Shelburne*): But this does not seem to apply to any new law that Parliament may pass in the future to impose an obligation—

Hon. Mr. PICKERSGILL: Well, these obligations would continue until Parliament amended them.

Senator SMITH (*Queens-Shelburne*): That is what I meant.

Hon. Mr. PICKERSGILL: Unless Parliament saw fit to alter any of the existing obligations, they are enshrined in the statute once it becomes law.

Senator ISNOR: Mr. Minister, I had a few remarks to make on Friday afternoon in connection with this bill, and I was wondering if you could help me out a little in regard to the terms of the agreement in respect of the flour contract with Russia. I have two questions. One is as to whether there is any provision in the bill respecting the shipment of grains through our Canadian ports, and, if so, why is Halifax being neglected 100 per cent with all of the shipments going through another—and the finest—port on the Atlantic coast?

Hon. Mr. PICKERSGILL: You mean Saint John, to put it bluntly?

Senator ISNOR: Yes.

Hon. Mr. PICKERSGILL: Well—

Senator ISNOR: My second point is to emphasize the need for making provision that all shipments on contracts entered into by the Government and various countries go through Canadian ports, instead of making use of any American ports.

Hon. Mr. PICKERSGILL: Yes. I think you should summon Mr. Winters to one of your committee hearings and put that question to him, because as Minister of Transport I do not make these contracts with other countries. Should we put it in the law that the Government—I do not think it ought to be in the transport bill but in some other law—cannot make a contract with any foreign country to ship anything out of Canada except through Canadian ports? Would that include airports? That question just leapt to my mind. But, this is a very big question, and I think it far transcends anything in this bill, and I just could not answer it.

As for the other question, Senator Isnor, I do not think Parliament—I have not done any research into this subject myself, but the impression I have is that we have never had any Parliament since Confederation that was willing knowingly to discriminate between the port of Halifax and the port of Saint John, and would very much doubt the capacity of any government to get legislation through Parliament that attempted to do that knowingly. At any rate, I would not like to try.

Senator McDONALD: Doesn't the customer specify the port.

Hon. Mr. PICKERSGILL: That depends on whether the customer is going to go and pick the goods up, I suppose. If he is going to pick them up in his ship, then, suppose if you want to sell them you may have to accept his terms. It just depends on whether you have a seller's or buyer's market.

Senator BROOKS: How do the rates for flour compare, say, between Portland, Maine, and Saint John New Brunswick, and Halifax Nova Scotia?

Hon. Mr. PICKERSGILL: There are many members of the press here so I will not use the verb I was thinking of using, but I did succeed in getting my colleagues to agree about a year ago to subsidize the reduction in the so-called

At and East rates, which are really of interest only to Saint John and Halifax. Perhaps I should explain this carefully because this is a little complicated. The Board of Transport Commissioners said that these rates should be increased. The Government set aside that increase by order in council. That meant the rates were less than the rates that the board considered right. I persuaded Mr. Sharp and my other colleagues to subsidize those rates and to keep them at that level. Therefore, I would think that they would certainly be below the rate to Portland, which we are not subsidizing.

Senator BROOKS: Have you any knowledge of the amount of shipping in those different ports?

Hon. Mr. PICKERSGILL: Subject to correction, I do not think any grain or flour goes through Portland at all. I am practically certain of that, because there are so many advantages, including lower rates, at Halifax and Saint John. Then it was represented to us that we had frozen the freight rates on grain and subsidized them but that we had done nothing adequate about flour, and one amendment was made in the Standing Committee of the House of Commons, and a further amendment was made, after representations were received from the millers, in the committee stage in the House itself. This was to make quite sure that we were giving as much support to the export of flour, through subsidy, as we were to the export of grain, for it is obvious we would prefer to export flour than grain if we could. That position has been safeguarded, because that subsidy is continued in this bill.

Senator PHILLIPS: I should like to ask a question based on Professor Borts' testimony in the House of Commons committee. I was very impressed with what he said. He talked of a figure of 150 per cent over the variable costs, which he maintains was too high, and he applied that to a 30,000 carload, and he pointed out that on a heavier carload the figure is really higher than 150 per cent.

Hon. Mr. PICKERSGILL: That is quite correct. It was an interesting exercise, I thought, and a highly theoretical one. I did not think it had much relevance to any of the realities of traffic, because the maximum rate formula was never designed to provide any protection for the shippers of heavy-weighted bulk commodities. That protection is provided in the bill in Clause 16 in an entirely, and, I think, much more satisfactory way. But Professor Borts did do something I was not able to do. He established that the maximum rate formula would, in fact, according to this figures, afford some protection to smaller shippers, the kind of small shippers we really felt needed protection. He showed that the 150 per cent of the variable cost was less than some of the rates now being charged in some of these cases. Therefore, I think by inference he suggested something that no one else had, and I do not think the people who employed him thought he would suggest, namely, that the maximum rate formula would be some protection to small shippers. I hope it is.

Senator PHILLIPS: But applied to a potato shipment, the maximum percentage increase would be around 225 per cent.

Hon. Mr. PICKERSGILL: If any potato shipper ever used the maximum rate formula; but no one ever will.

Senator PHILLIPS: What I am afraid of is that when the railways start negotiating with these shippers they will do so at the maximum figure, and it is going to take a great deal of effort in a number of cases to get the rates below the maximum.

Hon. Mr. PICKERSGILL: I would think that that is an unduly pessimistic assessment of what is likely to happen.

Mr. COPE: If the railways wanted to do this they could do it now. There is nothing to stop them from establishing a maximum rate on these potatoes right now, but the potato shippers are pretty able bargainers and secured agreed charges much below the maximum now charged by law.

Hon. Mr. PICKERSGILL: Mr. Cope has made a point which a lot of us found hard to understand, because to re-orientate your thinking from a regulatory system to a competitive system takes a lot of doing. Many of us have forgotten that very few, one or two per cent of the shippers, use the present maximum rates. That means that practically all the shippers have already made better bargains for themselves than the maximum rates. But I thought the maximum rate still ought to be there. It is a little like capital punishment; it is hoped to be a kind of deterrent but one that is not going to be much used.

The ACTING CHAIRMAN: In the sense of neither one being used.

Hon. Mr. PICKERSGILL: Well, murder is still a crime in Iceland, and the last time I checked there I found there has not been a murder in Iceland for a century and a half. But they did not repeal the law.

The ACTING CHAIRMAN: We might as well not have it here. We do not pay any attention to the penalty.

Senator PHILLIPS: I agree with the minister in that I hope the maximum rate does not become capital punishment.

Senator WELCH: I would like to ask a question with regard to this plan that has been circulated. It is entitled, "Plan of Prairie Rail Network Guaranteed to January 1, 1975." I presume these lines are guaranteed not to be abandoned?

Hon. Mr. PICKERSGILL: That is right, all these coloured ones.

Senator WELCH: Does this guarantee also apply to the Atlantic provinces?

Hon. Mr. PICKERSGILL: There is no other part of the country where any line is guaranteed.

Senator WELCH: We have a line running through the Annapolis Valley from Yarmouth to Halifax which has been taken off umpteen times. I suppose we have no guarantee on that one?

Hon. Mr. PICKERSGILL: No. I think it was felt that the people in the Annapolis Valley, even in the one hundred years since Confederation, have been effective enough in acting as spokesmen for their own interests that there has been no need for a statutory guarantee.

Senator PHILLIPS: Surely you are not suggesting that the western people have not been effective too?

Hon. Mr. PICKERSGILL: Well, the situation is rather different, of course, because it has a relationship in the western provinces solely to the gathering system for grain, and there are many of these lines that the railways alleged were losing money. I suppose there is a presumption that they were, because if they were making money I cannot think why the railways would want to get rid of them. But the grain growers and the people in the grain trade said they were essential for the moving of this crop, and it was suggested that these lines, if they were to be retained, should have their losses met by the Government. That principle was accepted in this bill, and in the case of these lines what it means is that if the railways can prove that they are losing money on any of these orange lines they will be entitled automatically to a subsidy. Mind you, they will not get that and the transitional subsidy at the same time.

Senator WELCH: This line I spoke of, the Dominion Atlantic Railway, owned by the CPR lost money for years. Then under new management it made a profit of \$300,000, and now it is going back again. With a small subsidy it would be able to remain active there.

Hon. Mr. PICKERSGILL: Of course, it cannot be abandoned unless all the procedures in the new law are followed, and certainly people will be able to make representations. All considerations required in the new law will have to be taken into account. If the CPR or the Dominion Atlantic Railway could prove it was losing money but the commission decided it was an economic necessity to



have it there in the national or regional interest, the loss would have to be made up.

Senator LEFRANCOIS: And there would be a public hearing.

Hon. Mr. PICKERSGILL: Oh, yes.

Senator ARGUE: I wonder if I could ask the minister what his definition of "uneconomic" is and how that might be summarized if it is not just the loss of money on a particular branch line.

Hon. Mr. PICKERSGILL: Well, we had quite an interesting debate in the House of Commons. You might like to look at the *Hansard*. Mr. Schreyer, the member from Springfield, had some quite interesting things to say. He wanted us to go back to say that there must be a "loss", instead of that it was "uneconomic". I do not think the difference is very great.

In 1964, when we had a "loss", all of the prairie governments, particularly that of Saskatchewan, asked us to substitute "uneconomic". We substituted it in the new bill and then they all came back and asked if we would go back. Well, I decided that this "he loves me, he loves me not" attitude could not go on forever. We had to stop somewhere. But I do not think it really matters very much, except that I had the view that, if anything, a railway might be losing money but the lines might still be economic when the whole economy is taken into account.

Senator ARGUE: Mr. Chairman, I certainly have no objection myself. I am all in favour of it and I certainly compliment the minister on the work he did in the House and on his ability to get such a complicated bill through in such a relatively short time. I certainly agree that what we want as a nation is an economic type of overall transport policy divided amongst its segments. But my question about the particular railway situation of railway line abandonment might be put like this: Will consideration be given by the commission to the additional cost that will incur to the farmers concerned with the abandonment of a line?

In other words, will the farmers' additional expenses for local trucking facilities be given equal weight with the trucking facilities operated by larger firms? Because I see that perhaps the railways can prove a loss and, certainly, if the main commodity they haul is grain, they probably have no trouble proving a loss at all, unless you say that all of the rail revenues on grain are attributable to the branch line alone. But if you can weigh against the money lost to the railway operating a line the actual additional money it costs the farmers to haul their grain a longer distance, then that is a very important point.

Hon. Mr. PICKERSGILL: The commission is specifically instructed to take that into account. Not only are they instructed to take into account the loss to the farmers, but also the loss to the villages along the line.

Senator PEARSON: What about the personnel of the railroads of the abandoned line

Hon. Mr. PICKERSGILL: That is definitely excluded.

Senator PEARSON: Excluded?

Hon. Mr. PICKERSGILL: Yes, because it is covered in other legislation. As a matter of fact, the best advice we were able to get, and this is one reason why it is excluded, is that most of these things are covered by collective agreements, and it is not thought, except in very rare cases, that it is going to involve any loss of employment. It may just mean that the employment will be somewhere else on the system instead of on the abandoned line.

The ACTING CHAIRMAN: Senator Argue, the answer to the question you raised is on page 28 in subclause (e).

Senator ARGUE: It may be. I was thinking of the precise dollar loss or precise increase in dollar expense to the farmer.



The ACTING CHAIRMAN: That is part of the economic effects.

Senator ARGUE: Well, if it is that kind of a precise weighing of something in the balance, I can see that it is of very great importance. On the other hand, if it is just dealing with general economic effects, whether an area can survive without a railway line and so on, that is another matter.

The ACTING CHAIRMAN: I think a more general statement would be preferable to a precise wording of what is to be included. It gives the commission more flexibility. Are there any other questions?

Hon. Mr. PICKERSGILL: I think you have to read the whole thing, and take into account all these sections on page 28. The situation is thoroughly covered by all of them.

The ACTING CHAIRMAN: Are there any other questions for the minister?

Senator BURCHILL: Mr. Minister, there are no branch lines subsidized at the present time, are there?

Hon. Mr. PICKERSGILL: Not specifically, no. We are paying the railway \$100 million. But not for specific individual lines; not that I know anything about.

Senator LEONARD: Mr. Chairman, it might be as well to have on record a statement from the Minister of Transport as to the effect of the bill on the Crowsnest Pass rates.

Hon. Mr. PICKERSGILL: I think Senator Leonard is a friend. My view is that the Crowsnest Pass rates, and the related rates, are protected in this bill in such a fashion that those rates could not be changed without another Act of parliament. I say that so long as I am Minister of Transport—and I am authorized also to say that so long as the present Government is in office—no such legislation will be introduced into Parliament.

Senator McDONALD: Hear, hear.

Hon. Mr. PICKERSGILL: We were told in the House of Commons that these rates had almost a spiritual or theological significance. I do not go quite that far, but they are considered—

The ACTING CHAIRMAN: There are spirits to be got out of the grain, you know, Mr. Pickersgill.

Hon. Mr. PICKERSGILL: Yes, they are considered, however, to be almost a part of the Constitution of Canada.

Senator ASELTINE: They are sacrosanct.

Hon. Mr. PICKERSGILL: That is getting almost into the religious field again, but the senator speaks for that area. The only question, of course, that arises in this bill is whether or not these rates may be compensating the railways for what they are doing, and that question, of course, is entirely separate and is open to determination. But so far as the rates themselves are concerned, they cannot be changed at all unless there is another Act of Parliament.

Senator DESCHATELETS: Mr. Minister, under clause 15, the commission has the right to inquire into any studies and research into transport, including the rates of the Crowsnest Pass.

Hon. Mr. PICKERSGILL: Line 20 says "The Commission shall inquire into." It does not say that it may. Looking at subsection (e) it says that the commission shall:

- (e) inquire into and report to the Minister upon possible financial measures required for direct assistance to any mode of transport and the method of administration of any measures that may be approved.

Mr. Lewis and Mr. Scheyer both argued in the House of Commons—and they are both members of the Bar—that the meaning was that the commission not only had the power but the duty to inquire into whether any imposition was put on

the railways by law for which they were not compensated, and, if so, what compensation they should get.

The ACTING CHAIRMAN: Are there any other questions of the minister? Then I will say thank you very much, Mr. Minister. We appreciate the information you have given us and we will now push ahead with our consideration of the bill. If we run into trouble we will send an SOS to you.

Hon. Mr. PICKERSGILL: Thank you very much, senators. I appreciate very much your kindness.

The ACTING CHAIRMAN: Thank you. I was wondering what time the committee would like to adjourn? We had got down to Part III. Shall we do Part III and then adjourn until the Senate rises this afternoon?

Senator LEONARD: Is it Part III that does not come into effect at the present time?

Mr. BALDWIN: No part of the act comes into effect unless proclaimed specifically by the Governor in Council, and he has authority to proclaim various sections at various times.

Senator LEONARD: You are also holding back Part III because of your discussions with the provinces.

Mr. BALDWIN: That is correct, sir.

The ACTING CHAIRMAN: Would you like to go through Part III now? It deals with extraprovincial motor vehicle transport. Section 29 deals with the application of the Part. Again there are things to be done before this Part becomes effective.

Senator PHILLIPS: Are we meeting again at 2.30, as the notice said?

The ACTING CHAIRMAN: No. When the notice went out it was thought that the Senate was going to sit this evening, but I understand the Senate is going to sit at three o'clock. It will not be sitting for very long. It will adjourn so that we can re-assemble to go on with our consideration of the bill. So, when we adjourn, we will be coming back here as soon as the Senate rises this afternoon.

Now, I take it that section 29 carries?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 30 is a saving clause.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 31 deals with the questions of licences. Are there any questions on that?

Senator PEARSON: What arrangements have been made with the provinces concerning licences?

Mr. BALDWIN: No specific arrangements have been made. Discussions have only been preliminary to a broader meeting that we will have to have with the provinces at some stage.

Senator PEARSON: The whole question of highway maintenance has to come under consideration yet, does it not?

Mr. BALDWIN: Highway maintenance would be a separate issue. It does not come under this bill. It is a provincial responsibility now, sir.

Senator PEARSON: You will have to have a conference before you can license something to travel over the provincial highways.

Mr. BALDWIN: There would have to be an agreement, certainly, between the federal and provincial licensing boards.

The ACTING CHAIRMAN: The whole basis of interprovincial motor transport is that at the moment it becomes interprovincial the federal department comes in.

Mr. COPE: In the issuance of the franchise but not the motor vehicle licence plate. In all instances the motor vehicle licence is issued by the province and would not be interfered with in any way.

The ACTING CHAIRMAN: But once the federal authority has jurisdiction it could make the same regulation with regard to interprovincial transport.

Mr. BALDWIN: That is right.

Senator SMITH (*Queens-Shelburne*): Does this mean eventually, if this legislation comes into full effect, that if a transport company has a purely provincial operation it would have to apply to the federal authority for permission to operate?

Mr. BALDWIN: Not if it is purely provincial, but only at the moment it crosses the boundary.

The ACTING CHAIRMAN: But the moment it does the federal authority comes in.

Senator PHILLIPS: In section 31(2) there seems to be some conflict between the principle of having established rates, on the one hand, and then the commission having the authority to decide whether a transportation system is necessary.

Mr. BALDWIN: I think the answer there would be that the principles of the bill refer to competition between modes of transportation, trucking versus railways, and shipping, and so on, but do not preclude economic regulation within a single mode internally, if I can describe it that way.

Senator PHILLIPS: What I am confused about is how we are going to establish trucks as being in competition with railways if we limit the number of trucking firms that can obtain a licence.

Mr. BALDWIN: This would be a matter for the commission to decide in a particular case. The formula is the same in most countries in relation to licensing requirements.

Senator THORVALDSON: You were referring a moment ago, Mr. Baldwin, to the necessity for a provincial licence by any truck. Do you mean that if, for instance, you have a trans-Canada bus line running right across Canada which was licensed under this act, that the buses starting, say, in Vancouver and ending up in Toronto would be required to carry a provincial licence?

Mr. BALDWIN: The vehicles would have to have provincial licences in each province in which they function.

Senator THORVALDSON: But supposing you licensed a route right across Canada and one province refuses to grant the motor vehicle licence of a particular bus or vehicle?

Mr. BALDWIN: I doubt if they could do so, although I speak not as an expert. The provincial licensing authority might take the position that some of the operations are purely provincial and require that a provincial common carrier licence be required for that particular segment. It is this situation that convinces us that there must be some effective cooperation between transport boards that issue common carrier licences and any federal authority that deals with the matter.

Senator THORVALDSON: Then it would seem to me that the jurisdiction of the federal Government is very doubtful in this field unless it is very well defined.

The ACTING CHAIRMAN: When you say that the federal authority is doubtful, Senator Thorvaldson, is it not rather that there is an area to which the federal authority in such an operation might not extend and you might have to supplement it with a provincial common carrier licence having regard to the nature of the operations you were doing in a particular province as well as or in addition to your interprovincial operation.



Senator THORVALDSON: I can understand that. I am referring entirely to a carrier starting out from Vancouver and going across Canada say to Montreal. Is any province in a position to stop that operation by saying it will not grant a provincial licence to those vehicles?

Senator SMITH (*Queens-Shelburne*): In some provinces they do not even call that right a licence. I have in my hand a new permit for my car to operate on the roads of Nova Scotia, and other roads in the country, I presume. The use of the word "licence" here, I think, has a different meaning from "permit."

The ACTING CHAIRMAN: Let us not go into the refinement of words. We have a question of jurisdiction to deal with. The purpose of negotiations and discussions now going on in the provinces is to resolve the possibility of just such a things as you are suggesting, Senator Thorvaldson. Senator Flynn?

Senator FLYNN: I would like to ask Mr. Baldwin if from a strictly administrative viewpoint the present situation of jurisdiction of the provinces only presents any difficulty. It seems to me that when the federal authority decided that it would not intervene everybody was satisfied that the provinces would have exclusive jurisdiction. I was wondering whether there is any difficulty, if there is any change requiring authority to have two jurisdictions.

Mr. BALDWIN: Referring to the first question, there are gaps in the present system that mean it is not fully effective. There have been court decisions, and I think Senator Thorvaldson referred to one. The other is the Kleysen case which displayed certain weaknesses in the legislation. Also there are unevennesses in the federal jurisdiction which apply at the provincial levels and therefore we have not a truly national scheme. Certain of the provinces, as well as certain portions of the trucking industry, suggest that there should be a national approach to this. This is where we have started the discussions with the provinces.

Senator FLYNN: But would this not remove discussion with the provinces at a local level?

Mr. BALDWIN: Not in the least.

Senator FLYNN: I am thinking of a situation that might arise unless the provincial authorities decided to adjust their legislation.

Mr. BALDWIN: This is why it is essential to work with the provinces.

The ACTING CHAIRMAN: Shall section 31 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 32. Shall section 32 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 33—Tolls and tariffs. Shall section 33 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 34 deals with free and reduced rate transportation. Shall section 34 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 35 deals with the power to make regulations, and it enumerates all the conditions which the commission may govern by regulation. This section extends for two pages. Shall section 35 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: That brings us to Part IV, and I suggest that that may be deferred until this afternoon.

Senator DESCHATELETS: There are two clauses in Part IV, Mr. Chairman, which might be dealt with now.

The ACTING CHAIRMAN: Part IV deals with bridges. We have two sections about which perhaps Mr. Baldwin could tell us. We could easily dispose of them before we adjourn.



Mr. BALDWIN: This is in respect of jurisdiction in regard to safety matters in connection with certain bridges which is presently vested in the Board of Transport Commissioners, although they have for that purpose used the engineers of Public Works to do the work for them. This part merely transfers the complete jurisdiction in regard to these technical and safety standards for these particular bridges to the Department of Public Works.

Senator THORVALDSON: Does this refer to all bridges or only to railway bridges?

Mr. BALDWIN: All bridges under federal jurisdiction.

The ACTING CHAIRMAN: Does Part IV carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: That brings us to Part V, which is a big part of this bill. We will resume our consideration of that when the Senate rises this afternoon.

The committee adjourned.

Upon resuming at 3.45 p.m.

The ACTING CHAIRMAN: I call the meeting to order. When we adjourned this morning we had reached Part V on page 24 of the bill, commencing with section 38. Mr. Baldwin, have you any comment to make on section 38?

Mr. BALDWIN: No, Mr. Chairman; although I can give a brief explanation. The principal purpose of this clause is to perpetuate or to continue the arrangements that are needed for the regulation of bridge tolls.

The ACTING CHAIRMAN: You say "perpetuate"; what do you mean by that?

Mr. BALDWIN: To continue the regulation of bridge tolls according to the principles already used.

Senator LEONARD: Is there any substantive change in section 42?

Mr. BALDWIN: No.

The ACTING CHAIRMAN: Notwithstanding anything you have done in relation to changing rate formula, or anything else, the old scheme applies?

Mr. BALDWIN: As far as bridge tolls are concerned.

The ACTING CHAIRMAN: Shall section 38 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 39?

Mr. BALDWIN: The present wording of the section is related only to agreements between a railway company and a steamship company. The purpose of the amendment is to make reference to agreements which could be with any other transportation company operating as a common carrier or having the status of a common carrier. This would make it possible to deal with inter-modal agreements between carriers not just those provided or referred to which are a railroad and a steamship company.

Senator PEARSON: Does it deal with any company or number of companies in particular?

The ACTING CHAIRMAN: Well, directors act through the majority; that is the law.

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: Shall section 39 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 40.

Mr. BALDWIN: At present a separate Act of Parliament is required in any case where a railway company, and this primarily means the CNR, wishes to instruct a branch line over six miles in length. Recent experiences over the last

few years have indicated that this is a rather short distance and that it is requiring a number of small bills to be introduced which the Government felt were not really necessary, and that it would be more appropriate to modern conditions to have the six miles changed to 20 miles.

Senator KINLEY: What about the cost?

Mr. BALDWIN: The cost has to be approved by the Government, anyway.

Senator BENEDICKSON: With respect to branch lines, Mr. Baldwin, is there still a policy under which the cost of new branch lines would be authorized by a special bill in the two Houses of Parliament rather than through the CNR financing itself?

Mr. BALDWIN: This would depend to some extent, sir, on the arrangements which the CNR may make in any particular circumstances. If it requires an advance from the treasury under the present proposals of the bill special legislation would only be required if the branch line is over 20 miles in length. I am not sure whether I took your point correctly.

Mr. COPE: As I recall, the Canadian National Railways get the approval to expenditures or authority to borrow money for construction of branch lines in two ways, through the Canadian National Railways Financing and Guarantee Act or by Act of Parliament. In this case the special act would only apply to lines in excess of 20 miles, and then in accordance with any arrangements the Minister of Finance or Minister of Transport would make with respect to railways to provide that provision under the special act, or the Canadian National Railways Financing and Guarantee Act.

Senator BENEDICKSON: Is the other new legislation?

The ACTING CHAIRMAN: Only increasing the six miles to 20 miles and what flows from that.

Senator LEONARD: But with respect to the financing of a branch line under 20 miles there is no legislation even with respect to the financing?

Mr. BALDWIN: Unless the Government decides to do so under the Canadian National Railways Financing and Guarantee Act.

Senator PEARSON: Would two sections of ten miles on the same main line be considered as 20 miles.

The ACTING CHAIRMAN: No; a branch line is a branch line.

Senator PEARSON: It applies to only one line.

The ACTING CHAIRMAN: That is right.

Senator BENEDICKSON: But a line as large in length as Pine Point to a mining area northward, would that have a counterpart for the future? Would that require a special bill?

Mr. COPE: Yes; and certain financial arrangements would be set out in the special act for the line.

The ACTING CHAIRMAN: Shall section 40 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 41?

Mr. BALDWIN: Section 41 is directly related to section 40 which just states the authority of the company to deal with construction and operation in cases under 20 miles.

The ACTING CHAIRMAN: You get some indication of a branch there, Senator Pearson, if you read it. You can run a branch from a branch. Shall section 41 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 42 deals with abandonment and rationalization of lines and operation.

Senator ASELTINE: I see on the map three lines they are trying to abandon in the Rosetown area.

The ACTING CHAIRMAN: You do not think they should do that to you out there?

Senator ASELTINE: Oh, no. It will put a crimp in all our deliveries so far as this big crop is concerned that we are marketing right now.

Mr. BALDWIN: Section 42 is a lengthy section which sets forth the new procedures which are proposed for application in the case of abandonment or rationalization of branch lines or the dropping of passenger services.

It is a lengthy section. The minister spoke on it this morning. The basic principles are really rationalization rather than abandonment, and an attempt to provide a broad series of criteria which shall be considered by the new commission in dealing with these cases, and to provide that they shall be dealt with, where applications come in, on an area basis; and also to provide that, where the commission decides that it is not prepared to allow abandonment to take place, even though evidence of economic loss by the railway may be available, that a subsidy may be paid to the railway to keep the line operating.

This has to be considered in the context of the map before you because, during consideration of the bill, in order to clarify the position, in view of the great uncertainty that existed in the western provinces regarding the very substantial number of applications that had been filed, the Government tabled a statement, accompanied by a map, which indicated that, to avoid any uncertainty, it would guarantee a substantial proportion of the existing branch network in the western provinces, the implication being that if any of those lines were in fact losing money they would be eligible to receive a subsidy.

This does not mean necessarily that the non-guaranteed lines would be abandoned, but at least the situation is that, the railway, if it desires, may apply to have such lines considered for abandonment. The commission will then have to determine whether it is prepared to allow them to be abandoned or whether they shall be continued in operation. If it decides on the latter course it must be prepared to pay a subsidy.

Senator ASELTINE: Will there be public hearings?

Mr. BALDWIN: Yes, public hearings.

The ACTING CHAIRMAN: I take it the subsidy you are talking about would be to maintain an uneconomic branch line?

Mr. BALDWIN: That is correct, sir.

The ACTING CHAIRMAN: Must the railway accept the subsidy if offered and continue the branch line?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: It has no choice?

Mr. BALDWIN: It has no choice.

Senator BENIDICKSON: What was that question and answer?

The ACTING CHAIRMAN: The question was, must the railway accept a subsidy when it is offered and continue the operation of a branch line. The answer was yes.

Senator BENIDICKSON: Under the judgment of this commission?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: I notice that the applications for abandonment are to the commission.

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: What is the obligation of the committee of the commission, the committee of railways, when it is dealing with a railway matter?



Mr. BALDWIN: Any committee set up by the commission can exercise the powers of the commission, under this legislation, and we would expect that this, in the first instance, would be dealt with by the railway committee of the commission.

The ACTING CHAIRMAN: I notice that the language is "the commission"—the committee of the commission, in the first instance.

Mr. BALDWIN: It would be dealing with them.

Senator LEONARD: Under section 314C(2), the wording is "may consider together as a group". What does that mean?

Mr. BALDWIN: This is to provide that, if a series of applications come in which are related in a particular area, the commission may look at them as a whole, not just individually—the interrelationship, the interaction, so to speak.

Senator ASELTINE: Can you tell me what would happen to applications which have already been made, which have not been dealt with—which came in between now and the time this act comes into force?

Mr. BALDWIN: These are currently being brought up to date by the railways and the Board of Transport Commissioners. In other words, the statistical data is being brought up to date, because it was rather old. They may proceed presumably, following the passage of this legislation—but the minister has given an indication to the House of Commons—

Senator ASELTINE: They will be held by this?

Mr. BALDWIN: No. If they do come forward, regardless of whether they come forward within the context of the existing legislation or the new legislation, they will come forward in accordance with the principles established in this legislation, even though this legislation may not have been proclaimed, because there is power in this section for the Governor in Council to define the manner in which current applications under existing legislation, under either clause 168, which is the existing legislation, shall be dealt with, and his intention would be to define that, if any have to be dealt with under that clause 168, the principles that are to govern the new procedure shall nevertheless apply in looking at them.

Senator THORVALDSON: I wonder if Mr. Baldwin can state any regulations showing the difference between the principle applicable to the whole question of abandonment as previously was the case and in this act? Could you set them out briefly?

Mr. BALDWIN: I will ask Mr. Cope to support me on this. If I could put it correctly, I think we will say that it is, first of all, instead of having a situation in which the railway applies for abandonment and in due course is told whether it may or may not abandon—the economics of the railway operation have a lot to do with it—if it is losing heavily it is better to get rid of it—you now have a possibility that the branch line may be subsidized—which did not exist before—if it is uneconomic. This makes it possible in turn for the new authority, in looking at the application, to take into consideration a much broader series of criteria in regard to whether abandonment should be granted or not. These are the criteria that are spelled out in some length on page 28. Generally speaking, the idea is an area approach and broad consideration of the economic impact in the whole area, the availability of other means of transport, and this sort of thing.

Senator THORVALDSON: Thank you. That is very useful.

Mr. COPE: There is much greater guidance to the commission than in the existing Railway Act, which says:

168. "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."



The ACTING CHAIRMAN: To use the minister's expression this morning, we have established guidelines.

Senator BENIDICKSON: What, in fact, has been the payment to the railways since the MacPherson Royal Commission report was brought down and before this legislation came forward? What has in fact been the payment in the last two or three years to the railways? Do you understand my question? They recommended certain things and Parliament did not deal with it. Now, what have the railways received because we did not have legislative enactment such as we are discussing now?

Mr. BALDWIN: There were no payments made specifically on account of branch lines, senator. What happened rather was the gradual accumulation of a series of general subsidies which were increased on three separate occasions, basically relating to a general increase in operating costs of the railways, with their grave overall financial position, the idea being that these were interim broad and general subsidies, designed to cover the situation. Usually, they were related to wage increases—quite frankly—designed to cover the situation until new legislation could be brought in. It started with the the Freight Rates Reduction Act which the minister referred to this morning. Additions were made related to the recommendations of the Royal Commission, and again the 1964 wage settlement and the total amount paid is over \$100 million at present.

Senator BENIDICKSON: In a calendar year 1966, for our railroads, what do you think that the Government provided in lieu of the passing of this legislation?

Mr. COPE: It was \$110 million approximately.

Senator BENIDICKSON: In 1966?

Mr. BALDWIN: On account of 1966. There were some payments on account of 1965 that were included in the total, but on account of 1966 it was approximately \$110 million.

Senator BENIDICKSON: And how much in 1965?

Mr. COPE: Roughly the same amount.

Mr. BALDWIN: It would be very close to the same amount, because the last increase was related to the 1964 wage settlement.

Senator BENIDICKSON: And distributed between two major railway companies, the CN and the CP, what would that division be?

Mr. BALDWIN: It was 60-40 relationship approximately—the 60 being CN and the 40 being CP.

Mr. COPE: For 97 per cent of the money.

Senator THORVALDSON: The main purpose of this subsidy payment was to take care of that roll back in freight rates? This was the initial step? As I understand it, the main purpose of this subsidy payment was to take care of the roll-back on freights?

Mr. BALDWIN: The roll-back of freight rates under the Freight Rates Reduction Act. This was added to on account of the situation which developed two years later, and then another item was added on account of the 1964 wage settlement. You are quite right, sir.

Senator ISNOR: How would that be shown in their reports or statements, Mr. Baldwin? Would it be credited to a certain item?

Mr. BALDWIN: The annual reports of the railways?

Senator ISNOR: Yes.

Mr. COPE: It appears as a revenue item.

Senator ISNOR: I see. Then on the other side is it an expenditure?

Mr. BALDWIN: It is just a general revenue item.

Senator BENIDICKSON: Is credit given for this immense amount of money, \$110 million? Is credit given, to your knowledge, in the annual reports of the CPR and CNR?

Mr. BALDWIN: It is in the CNR report. I cannot recall the CPR report.

Senator BENIDICKSON: The last reports available I suppose are for the calendar year 1965?

Mr. BALDWIN: Yes.

Senator BENIDICKSON: In your opinion, is there reflected in that report proper indication of their receipt of their share of this \$110 million?

Mr. BALDWIN: Speaking from memory, and so far as the CNR is concerned, yes. My memory is a little shaky on the CPR. We are going to find out.

Senator THORVALDSON: I think what Senator Benidickson means is are these payments regarded as income in so far as the railways are concerned?

The ACTING CHAIRMAN: Yes, they are.

Mr. BALDWIN: Yes, they are.

Senator BENIDICKSON: And they are properly given credit for as taxpayers' money? They are taxpayers' money, are they not?

Senator THORVALDSON: I do not think I have seen any item on that.

The ACTING CHAIRMAN: No, I think it only shows as revenue. Where else would you put it?

Mr. BALDWIN: The CNR has an item on it and we are checking the CPR.

The ACTING CHAIRMAN: There may be a note on the balance sheet indicating that so much of this is subsidy.

Senator LEONARD: These payments have nothing to do directly with the section of the bill relating to the abandonment of branch lines?

Senator DESCHATELETS: This amount of money appears somewhere as an expenditure, Mr. Baldwin, does it not?

Mr. BALDWIN: Not specifically, because it was not related to any one particular expenditure; it was a general subsidy.

Senator DESCHATELETS: Well, it appears as a subsidy.

The ACTING CHAIRMAN: No, it appears as revenue. There is a note to the balance sheet of the CNR indicating how so much of it was made up.

Senator LEONARD: Instead of shippers paying the freight, the shippers paid a certain amount, at which the rate was frozen, and the government paid the balance.

The ACTING CHAIRMAN: That is right.

Senator BENIDICKSON: The taxpayers paid \$110 million in one year, roughly 60-40 between the CNR and CPR. Is that what I am told?

Mr. BALDWIN: Yes.

Senator THORVALDSON: Mr. Chairman, while we are on this point, may I ask a question? Does the amount of this subsidy going to the CPR become reflected in the CPR accounts in such a way that, in so far as it is additional income, it would result in additional taxes being paid by the CPR in any way?

The ACTING CHAIRMAN: Mr. Baldwin has said he is not sure how the CPR has dealt with it, but we will be able to tell you that a little later this afternoon.

Mr. BALDWIN: It is considered under the heading Taxable Revenue.

Mr. COPE: Whether they include it within revenue or separate it out we do not know.

Senator THORVALDSON: In other words, it is done in such a way that it would be reflected in the final tax position of the CPR?

The ACTING CHAIRMAN: We will get that information later. Now, on page 30 we had got as far as "Rationalization of lines and operations." Will you explain what that part of the bill is getting at?

Mr. BALDWIN: Mr. Cope might like to speak on this.

Mr. COPE: 314D provides that the commission, after looking into the trackage accounts and train operation accounts, may have certain recommendations to make to the railways as to exchanges of running rights or lessor-purchaser changes in the ownership and operation of facilities in the area.

Subsection (2) would bring about certain changes that are deemed to be advantageous. If there are any capital expenditures made by way of adding to one system's trackage part of the other's trackage, these costs can be considered operating costs by the railway undertaking the connection and assimilating the new operation. Thus their subsidy would reflect those costs for the year.

Subsection 3 provides that under circumstances where for one reason or another the railways are not eager to join in the arrangement recommended by the commission the commission can make certain recommendations to the Governor in Council for whatever action the Governor in Council may wish to take.

Senator BENIDICKSON: Just on that point, assuming that the railways disagree, the commission may reach a decision. That is not good enough? It has to go to the cabinet?

Mr. BALDWIN: This is dealing with points beyond actual branch line abandonment. This gives the Government other methods of rationalization. It was felt that these should not be compulsory in the sense of imposing them on the railway. Especially when costs are involved. Therefore, provision was made that, if the railways do not accept them, or if they go beyond their normal field of responsibility, they may be reported to the Government which may then make further provisions to cover this if it is deemed necessary.

Senator BENIDICKSON: It would overrule this commission?

Mr. BALDWIN: No. It would merely implement the recommendations.

Senator BENIDICKSON: Or reverse them.

Mr. BALDWIN: No. Basically, it would implement them or—

Senator BENIDICKSON: Or what?

Mr. BALDWIN: Or not.

Senator LEONARD: Is this the section under which the kinds of pooling agreement that railway companies had before would be authorized?

Mr. COPE: No. This is a different manifestation of that type of action.

Senator LEONARD: Is it being brought about to cover a pooling agreement?

Mr. COPE: I would think so.

The ACTING CHAIRMAN: Well, I do not know. This seems to be tied in to dealing with traffic that still remains following a decision to abandon some part of a branch line.

Senator LEONARD: No, I do not agree.

The ACTING CHAIRMAN: If you read at the bottom of page 30, you will see that it says:

(4) In the exercise of its duties under section 314c the Commission may also make recommendations not directly involving a railway company

(a) in respect of the orderly handling of traffic remaining to a branch line or any segment thereof for which the Commission has fixed a date for abandonment; or—

Senator LEONARD: But the first three subsections have nothing to do with abandonment of lines, as I understand them.



The ACTING CHAIRMAN: No, but I am talking about subsection (4). I thought you were addressing your question of pooling to that.

Senator LEONARD: No, I was wondering whether pooling came in under the wording of 314D (1).

The ACTING CHAIRMAN: It might come in under subsection (1), yes.

Now, we get down to 314E on page 31. This is a definition section.

Mr. BALDWIN: This is a definition and procedure section for making claims for subsidies.

The ACTING CHAIRMAN: Oh, yes. Are there any questions on that part of it?

Senator McDONALD: Where in the act, if it is in this Act, do you find authority given to the commission to grant CNR running rights on CPR tracks or vice versa?

Mr. BALDWIN: That was the one we were just considering.

Senator LEONARD: Subsection 1 of 314D.

The ACTING CHAIRMAN: Now, we were dealing with the definitions, and dealing with making claims for subsidies.

Mr. BALDWIN: That is 314E. Yes, sir. This is the procedure on it.

The ACTING CHAIRMAN: This is the procedure. Are there any questions in connection with the procedure? If not, that takes us over to page 33 to section 314F.

Mr. BALDWIN: Section 314F, sir, is the provision that relates to applications pending under section 168, that is, applications that are now before the board. It states that a railway may elect to have these transferred, if it so desires, to be dealt with under the new procedure.

The ACTING CHAIRMAN: Yes, we have already talked about that. Now, 314G deals with the authority to prohibit abandonment. What have you to say on that?

Mr. BALDWIN: This is the clause which would be used by the Governor in Council to confirm the map which has already been announced.

The ACTING CHAIRMAN: Yes.

Senator PEARSON: In that case, just looking at the map south of Moose Jaw, you have the CNR running through Gravelbourg. They expect to abandon the line running east of Gravelbourg and running south into Radville and north into Moose Jaw. Then they have a small piece of line running east and west. What have they arranged about that one piece of line?

Mr. COPE: This is one of the few applications of that cooperation which was mentioned. The railways will of their own free will bring about a rationalization of their operations, and they have already met on this particular question and I would think they are going to reach an agreement whereby this particular piece of trackage can be dealt with on an exchange of ownership basis or on a running rights basis.

Senator BENEDICKSON: You mean the two railroads would combine to try and service this area with the elimination of some side lines?

Mr. COPE: That is right.

The ACTING CHAIRMAN: Then we come to 314H on page 34.

Mr. BALDWIN: This provides that the Governor in Council may fix by proclamation the date on which this section shall come into force. This section dealing with abandonment procedure may come into force quite separately and independently. Once this has been done, all branch line applications must be dealt with under the new procedure rather than under the old section 168, unless the Governor in Council gives special authority otherwise.

The ACTING CHAIRMAN: Then we come to 314I.



Mr. BALDWIN: This and the immediately subsequent clauses deal with passenger train services. The original recommendation of the MacPherson Royal Commission had been that provisions should be made for more or less automatic abandonment of passenger services if the railway could demonstrate that they were losing money and for the payment of a stated subsidy on account of uneconomic passenger services, which would decline every year on the theory that some would be abandoned each year.

Instead of following that procedure exactly, the provisions in the bill regarding passenger services have been drafted to follow generally the lines of those dealing with branch line abandonment, namely, to embody the idea of rationalization of services, and instead of automatic discontinuance, where it is considered that although the line is uneconomic it is desirable, a subsidy may be paid.

Senator PEARSON: Supposing you have a passenger bus line running parallel with the railway line and at the same time the railway is losing money, then the subsidy would be paid to the railway to continue in operation?

Mr. BALDWIN: Not necessarily. The existence of alternative means of transportation is one of the things to be taken into consideration. This is noted at the bottom of page 35 of the bill.

Senator BENIDICKSON: On this question of passenger services, which is very important, people have become accustomed to certain passenger services. Now if the railways don't propose to carry this on, there is a provision that the Government of Canada can pay the deficit?

Mr. BALDWIN: And require the railways to continue.

Senator BENIDICKSON: If the board decides it is advisable for them to carry on?

Mr. BALDWIN: Yes.

Senator BENIDICKSON: If that is not done, then the alternative services such as bus lines or airlines or somebody else like that must take over.

Mr. BALDWIN: The existence of alternative services is one of the guidelines to be taken into consideration in looking at an application for discontinuance of service before there is a decision.

Senator BENIDICKSON: But if this is something the railroads don't want to do—

The ACTING CHAIRMAN: Before there is an order to abandon, they may look at the alternative means of transport.

Senator PHILLIPS: Is there anything in the act to compel the railroads when carrying passengers to maintain a certain standard? I am thinking now of the debates in the other place and of reading of instances where people were held a long time on a train in the Gaspé region and were unable to obtain food.

Mr. BALDWIN: There is nothing new in this act in this regard. You would rely on the provisions in the present Railway Act so far as this situation is concerned.

Senator ARGUE: Are there any pending applications?

Mr. BALDWIN: Several. However, there are no well-known passenger services involved.

Senator BENIDICKSON: This is a soft cushion for the railways to transfer to public expense the costs of passenger services in certain areas that normally they would absorb in their national system. Now they can say "let the Government decide to take this over." But on a healthy reputation nationally they have hitherto absorbed these into their finances.

Mr. BALDWIN: Well, I am not sure that you could assume that the railways will continue to absorb losses on passenger services into their general accounts.

Senator BENIDICKSON: Am I correct in assuming that hitherto when they wanted to abandon services they had to go to the Board of Transport Services to get permission to do so? There had been a traditional right on the part of the public, and the costs were absorbed as part of the overall system even if that particular section operated at a loss.

Mr. BALDWIN: Yes.

Senator BENIDICKSON: Is this to be continued?

Mr. BALDWIN: Only if the commission decides there is a substantial public need for continuance of the service.

Senator ARGUE: I saw some time ago that somebody was saying that the CPR should run a train only every other day on its main line. I wonder if there is any information as to whether the CPR wishes to reduce its Canadian service?

Mr. BALDWIN: Not to my knowledge. The last statement of the Chairman of the Board was more or less a guarantee of the continuing of the Canadian.

Senator BENIDICKSON: With respect to the cost of passenger transportation, and I am directing this to the deputy minister, what expertise do you feel you have behind you now in comparison with the accounting services and the regular expertise and everything else at the disposal of the two railroad companies? What do you think you have in the department to combat suggestions that a certain enterprise, particularly passenger services, is uneconomical? How can you counteract a statement by the two railroads or by one or by each of them that they are losing money? How much expertise have you got to deal with that?

Mr. BALDWIN: The Board of Transport Commissioners would have that responsibility. They do have a costing staff which takes independent action in those matters, and in addition it would be contemplated under the new commission there would be a substantial strengthening of the costing competence of the organization, as will appear implicit when we come to the clauses which deal with costing procedures.

Senator BENIDICKSON: My impression is that when the Government or the public is opposed on a rate proposition, whether it is passenger or freight, they are rather outbalanced by the expertise of the private railway companies. Are we counteracting this?

The Acting CHAIRMAN: For one, I am not prepared to accept that the railways have all the genius and that every time they make application for abandonment they are overpowering in their statistical information. They do not always make their point, and it is a matter of weighing the evidence, and I am not prepared to accept a statement that the Board of Transport Commissioners is not equipped, and well equipped, to deal with these matters.

Senator BENIDICKSON: I think you made the point properly, Mr. Chairman, but my question to the witness is: Does he think that we are properly equipped to counteract the expertise of the railway companies when it comes to arguments about these matters?

Mr. BALDWIN: I think for the present procedures, yes. For the purpose of the new bill, there will have to be a strengthening of the accounting and costing competence.

The Acting CHAIRMAN: Clause 314J?

Mr. BALDWIN: This clause is similar to one a few pages back which establishes the procedure for applying for a subsidy on account of an uneconomic passenger service.

The Acting CHAIRMAN: That brings us to the end of section 42. Does section 42 carry?

Carried.

The ACTING CHAIRMAN: Section 43, two-thirds of the way down page 38, and that deals with section 315 of the present act.

Mr. COPE: This is a restatement in the bill of a clause which now exists in the Railway Act. The balance of the clause deals with certain powers of the commission with respect to accommodation of traffic which are consistent with the new philosophy prevailing in this act. The other parts of the section are the restatement of the odd words.

The ACTING CHAIRMAN: Generally speaking, section 315 of the present Railway Act deals with accommodation of traffic?

Mr. COPE: Yes.

The ACTING CHAIRMAN: This is repealing subsection 6 which gives the board the power to order specific works and tolls. What does it add?

Mr. COPE: It does not add anything. In the present Railway Act it reads, "or that specific railway tolls be charged." It indicates here the maximum charges that may be made. The railways are going to be given rate freedom subject to a maximum rate control.

Senator KINLEY: Can they expropriate property?

The ACTING CHAIRMAN: The railway?

Senator KINLEY: This commission, for the purpose of acquiring property?

The ACTING CHAIRMAN: No. You have to look at what powers the commission has.

Senator KINLEY: If it is for private purposes, I do not think they can expropriate.

The ACTING CHAIRMAN: The railway itself has general expropriating authority.

Senator KINLEY: Not for private lines.

The ACTING CHAIRMAN: If it is a branch line of a railway. Section 43?

Senator BENIDICKSON: What page are we on?

The ACTING CHAIRMAN: Page 39, section 44.

Senator BENIDICKSON: Thank you.

The ACTING CHAIRMAN: It is section 317 of the act.

Mr. BALDWIN: The new section 317 is designed to provide for the control of rates for the carriage of goods in smaller quantities up to 5,000 pounds. I referred this morning to the maximum rate theory which would apply where you have a monopoly condition. This particular clause is intended to deal with that situation for smaller loads of less than 5,000 pounds, to give the commission the power to establish a tariff in such cases if it feels it is necessary because of a monopoly condition.

The ACTING CHAIRMAN: They would appear to have the power to disallow.

Mr. BALDWIN: Yes, and to disallow.

The ACTING CHAIRMAN: Section 44 carries?

Mr. BALDWIN: A note I have here prepared by the Justice draftsman states:

In line with the general purpose of giving railway companies as much as possible of the freedom of action that other businesses have in conducting their affairs, the section proscribing the pooling of tolls except with the leave of the Commission is removed. The Section formed a logical part of the Act under the monopoly conditions formerly obtaining, but there now is no valid reason for retaining this item of regulation. Pooling, in fact, may be a useful means for railway companies to realize economies of operation and greater efficiency.

The ACTING CHAIRMAN: Shall section 44 carry?



Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 45, dealing with section 319 of the present Railway Act.

Mr. COPE: This is putting back that clause in a somewhat reduced form.

The ACTING CHAIRMAN: Shall section 45 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: On page 40, section 46. What happens there is that three sections of the Railway Act are repealed. What is the effect of the repeal? What do they deal with?

Mr. BALDWIN: These were so-called unjust discrimination, undue preference clauses which have been eliminated because they do not fit the concept of competitive regulation. They have been replaced by a new maximum rate formula in clause 16, which is the appeal clause on rates prejudicial to the public interest.

The ACTING CHAIRMAN: Do we approve section 46?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 47 substitutes new section 324 of the Railway Act.

Senator ISNOR: May I come back to page 40, transportation by rail and motor vehicles. As I understand it, the CNR controls the Smith Transport Company.

Mr. COPE: The CPR.

Senator ISNOR: Is it the CPR or the CNR?

Mr. COPE: The CPR.

Senator ISNOR: They provide facilities, and what about the private trucking companies?

Mr. BALDWIN: This clause is intended to require that the railways may not give preferential treatment to their own subsidiaries as compared to private trucking companies.

Senator ISNOR: That is what I wanted.

The ACTING CHAIRMAN: Clause 47?

Mr. BALDWIN: The amendments here are, first of all, consequential to the previous repeal or elimination of certain words such as "discriminatory". There is a broadening of the reference to joint tolls which previously referred to joint tolls between rail and water, and is now to cover joint tolls between any two means of transportation.

Senator KINLEY: That would be the Prince Edward Island ferry and the Newfoundland ferry?

Mr. BALDWIN: Yes, it could be.

The ACTING CHAIRMAN: Section 47 carries?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 48, at the top of page 41.

Mr. BALDWIN: The new subsection (1) merely provides the company shall file a classification for freight purposes with the commission for background purposes.

The ACTING CHAIRMAN: Shall section 48 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 49.

Mr. BALDWIN: These are also consequential changes relating to freight and tariff filings. I can give you a detailed note of each of these subsections if you



wish, but I can simplify it by saying that they are adjustments regarding the legality of tolls.

The ACTING CHAIRMAN: Yes, fill that in a little bit.

Mr. BALDWIN: Yes. Subsection (1) is unchanged in this bill. The company is given authority to pass a bylaw which in effect empowers it or its agents to issue tariffs of tolls. The bylaw is the authority by which the company itself approves tariffs made in its name, and accepts responsibility for them.

Subsection (3) of the present act provides that such bylaws shall be approved by the new commission or board. This is now considered unnecessary since the bylaw itself does not set the tolls but is merely the legal authorization for them. Under this subsection it is required that the bylaws shall be filed with the Commission so that they shall be aware of them.

Subsection (4) originally provided that the board should approve such tolls or vary them, and this is dropped as not having any relevance in the new system.

Subsection (5)—that is, in the present act—specifies in some details the requirements and procedure for the authorization of tolls, including the board's approval of the bylaw. This is simplified in order to change that provision and make it fit in with the new system, which provides that the company shall not charge tolls other than those that have been specified in a tariff that has been filed with the board, and no formal approval is required.

Subsection (5) amends the present subsection (6). It incorporates in briefer form and in consistency with the general principles of rate regulation certain subsections in the present Railway Act.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 50?

Senator BENEDICKSON: This is important.

The ACTING CHAIRMAN: Do you mean section 50?

Senator BENEDICKSON: Yes. It relates to the traditional Crowsnest Pass Rates.

The ACTING CHAIRMAN: That is right.

Senator BENEDICKSON: Now, I believe in the other House there was some difficulty about this legislation as having some relation to this. I would judge that it would be open to this committee legislatively to do something about this if it chooses to do so, but I am not recommending that at the moment. What I am looking at is the left-hand side of our information sheet on the bill.

The ACTING CHAIRMAN: On page 42?

Senator BENEDICKSON: Yes, on page 42, the one that refers to the Crowsnest Pass Rates.

Senator ASELTINE: The minister went into this fully this morning.

Senator BENEDICKSON: I am sorry, but I was not here this morning. I am not a member of the committee. Has this been dealt with to your satisfaction?

Senator ASELTINE: Yes.

Senator LEONARD: The minister made a statement on it this morning.

Senator BENEDICKSON: The only question I wanted to raise was whether the increased grain traffic—maybe this has been covered—of the last two or three years, particularly westward in virtue of the sales to China, have in the opinion of Mr. Cope, an economist in the department—and an impartial person, I presume—brought profitable revenues to the railways, or whether they have hurt the revenues.

Mr. COPE: I think the section as set out has really nothing to do with revenues and the costs of the carriage of grain. It merely maintains the Crowsnest Pass Rates. In fact, it extends the statutory features of the Crowsnest Pass Rates to Vancouver and Prince Rupert, and also to Churchill.

The ACTING CHAIRMAN: It just says that in this bill, no matter what we say or do, nothing will disturb the existing Crowsnest Pass Rates—that is in either subsections (1) and (2).

Senator BENIDICKSON: Perhaps I did not put my question very well, Mr. Chairman. My thought was that this was an opportunity to obtain information from the deputy minister or from the branch head in the Department of Transport having to do with railways, on the question as to whether their inside studies in the department indicate that this Crowsnest Pass Rate freezing under the old legislation is in fact a loss to the railways, or whether they can get by under it.

Mr. BALDWIN: I do not think it is possible to answer that question categorically. I think all you can say is that the statistics that were used by the MacPherson Royal Commission in framing their comments on this situation are obviously out of date because of the substantial increase in the movement of export grain.

Senator BENIDICKSON: I think that is a very, shall I say, clever answer, but I submit this is an important question. I never like to give evidence in committee—

The ACTING CHAIRMAN: Actually, senator—

Senator BENIDICKSON:—but I want to say before I am cut off that the net profits of the two railways have not been so bad since they had to ship increased amounts of grain under the obligation of the Crowsnest Pass Rates. Can I ask the deputy minister whether in his department, or in the branch having to do with railways, there has been a study as to whether this is a harmful thing to the railways, or whether, having regard to the volume, they can get by.

Mr. BALDWIN: Not at the moment.

Senator BENIDICKSON: There is no study in the department?

Mr. BALDWIN: No.

Senator ASELTINE: When there is a big crop they always make money carrying grain.

The ACTING CHAIRMAN: Shall section 50 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We come now to section 51, which is simply a repeal of section 332 of the act.

Mr. BALDWIN: Yes, section 332 sets forth the requirements for class rate tariffs, and they are no longer necessary.

The ACTING CHAIRMAN: Does section 51 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We come now to section 52 on page 44.

Mr. BALDWIN: These are the provisions in the present legislation relating to the filing of tariffs reducing tolls, and they have been somewhat liberalized in the re-drafting. The old distinction between competitive and other rates becomes superfluous so it is eliminated from the new subsection (2). In the case of tariffs of reduced tolls the new subsection (3) merely makes it clear that reduced rates may be placed in effect immediately on or after the issue of the tariff without giving a substantial period of advance notice.

The ACTING CHAIRMAN: Yes.

Mr. BALDWIN: In other words, it gives the railways flexibility to meet downward adjustments on short notice to meet competitive conditions.

The ACTING CHAIRMAN: Does section 52 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 53 on page 45?

Mr. BALDWIN: This is a provision, sir, that establishes a floor under rates—the so-called compensatory floor. Perhaps Mr. Cope can speak to the definition of a compensatory rate.

Mr. COPE: Well, the compensatory rate determination would be a job for the commission. The commission are given certain instructions here as to the ways in which they will consider it. Subsection (5) enacts that where the commission receives information by way of a complaint or otherwise containing *prima facie* evidence that a freight rate is not compensatory the commission will make an inquiry into the question.

Senator PEARSON: In other words, if the competition is too keen, and the railway is losing money, it can appeal?

Mr. BALDWIN: That is correct. There is a floor set on the basis really of the variable cost.

Senator LEONARD: Is there any definition anywhere of the word “compensatory”?

Mr. BALDWIN: Yes, when the rate exceeds the variable cost.

The ACTING CHAIRMAN: Where does that appear?

Mr. BALDWIN: The new section 334 (2) provides:

A freight rate shall be deemed to be compensatory when it exceeds the variable cost of the movement of the traffic concerned as determined by the Commission.

Senator BENEDICKSON: This may not be relevant to this section, but it is another instance where a railway, shall we say, is almost the exclusive carrier. What are the rights of those who appeal with respect to charges made in a non-competitive area? And I want to add to my question: Are there considerations given to rates charged say for the same areas in another territory such as the United States? Frankly, I am thinking of the carrying of iron ore over say 100 miles. What protection has an iron mine, which depended on one railway, from exorbitant rates? When I say “exorbitant,” I mean if they are related to or compared to the rates that would be charged for carrying the same tonnage of iron ore below that in the United States?

Mr. BALDWIN: Section 53 now before the committee contains three separate subsections. The first I mentioned previously. It is the clause providing for the compensatory floor. The second, section 335, provides for the two-year freeze on certain rates, to and from the Atlantic provinces. That also was referred to by the minister this morning. The third, section 336, is the clause which provides that where a shipper believes he is in a monopoly position *vis à vis* the railways he may apply to have a maximum rate fixed. And clause 336, sets out a rather detailed procedure and formula for establishment of such maximum rates. Both in that case and in any other case where he may be dissatisfied with the rate made available to him by the railways he also has the right to apply under clause 16, which was dealt with this morning. The criteria that are set forth in that clause have some bearing on your last question, because they relate to undue advantage, etc.

Senator PHILLIPS: Before leaving section 336, in subsection (2) the figure of 150 per cent of the variable cost is mentioned. I have never had an adequate explanation of the origin of the figure of 150 per cent. The only ones I know who can work on this markup are lawyers, and I wonder how railways do it.

Mr. BALDWIN: This was the figure recommended by the royal commission, sir.

Senator PHILLIPS: I have read the report, and I am asking how they arrived at the figure of 150 per cent.



Mr. BALDWIN: The best thing we can do is to refer you to a substantial number of considerations of the commission in coming to 150 per cent.

Mr. COPE: On page 98 of volume 2 of the royal commission report they set out these guidelines:

To summarize and itemize we set out as objectives of maximum rate control the following:

1. It must limit the impact of railway monopoly upon shippers.
2. It fails in its purpose if it is seriously detrimental to the revenue position of the railways.
3. It must be flexible enough to reflect at intervals the changes in railway costs which will occur with the rationalization of plant and services.
4. It should leave incentives for efficiency with the railways and offer incentives to the captive shippers to use transportation as economically as they would in a competitive environment.
5. It must be in keeping with newer ratemaking practices.
6. It must not be in conflict with the optimum allocation of resources in transportation.

In addition to these necessary objectives there are some attributes which would be desirable to have associated with maximum rate control.

1. It would be desirable that it provide some solution to the additional burdens which fall on the long-haul shipper.
2. If possible the regulatory and appeal machinery should be rationalized and simplified to use less time and energy in hearings.

These were the basic factors they took into account and they came up then with the formula set out.

Senator PHILLIPS: I still have not an explanation on how they arrived at the figure of 150 per cent.

Mr. COPE: They do not report on that. They show their general step-by-step analysis.

Senator BENIDICKSON: Mr. Cope, on that point of using an arbitrary position, I think there is a big dispute between the two major railways and say the shippers of lumber and timber products in Northwestern Ontario. My impression is that in anticipation of this legislation which gave freedom to the railways, or gave them more freedom than they had, they proposed to make an increase in their charges for the transport of timber products in the Lakehead area and in Northwestern Ontario generally, that they could not for competitive reasons do anywhere else in the country; but this is before the passing of this legislation. Have you any comment to make on that?

Mr. COPE: The rates you refer to are what are known as competitive rates. The conditions attached to the establishment of these rates are not going to change with this new legislation. The rates on lumber from that area are not such as under most situations familiar to me would involve the development of a maximum rate. I know the rate increase has been suspended until March 31 for further investigation as to other competitive alternatives available to the shipper and what bearing that might have on railway rates.

Senator BENIDICKSON: But did this increase relate to contemplation of advantages under this statute?

Mr. COPE: This bill gives the railways no greater freedom with respect to those competitive rate increases than they now have. The bill itself does not tip the balance.

Senator BENIDICKSON: It does not change things?

Mr. BALDWIN: Not in that situation.



Senator BENIDICKSON: Not with respect to this situation?

Mr. COPE: No.

Senator BENIDICKSON: But it is within your knowledge that there is a protest to the department about this 10 per cent increase with respect to forest products?

Mr. COPE: Yes, we are familiar with it.

Senator BENIDICKSON: But it does not directly refer to the passing of this legislation?

The ACTING CHAIRMAN: No.

Senator BENIDICKSON: Thank you.

The ACTING CHAIRMAN: Now, the section we have been talking about, the new section 336, takes us to page 51.

Senator ISNOR: Mr. Cope, did you speak in Halifax?

Mr. COPE: Yes; it was very enjoyable.

Senator ISNOR: You dealt with this 150 per cent. Did you make a statement that it was pretty hard to understand?

Mr. COPE: I may have. I cannot recall that I referred to 150 per cent. I think I know what you mean, senator.

Senator ISNOR: It does not make sense.

Mr. COPE: I was referring to what the position would be for Canadian railways if all rates exactly equalled variable costs. I think this is the one you mean. I said that if the railway charged nothing more than variable costs for all their product movements in Canada, I estimated that their total deficit would run to some \$400 million. I was trying to show that the railways required something over and above variable costs to meet their overhead costs.

The ACTING CHAIRMAN: Is section 53 carried?

Senator ISNOR: No, Mr. Chairman. Section 53 is very important. It takes in clauses 334, 335 and 336. I understand there is to be a hearing tomorrow, by which time representations are to be made from the Alberta Grain Growers' Association, is it?

Mr. BALDWIN: Not that I am aware of.

The ACTING CHAIRMAN: Mr. J. J. Frawley is going to appear tomorrow morning. The purpose of his visit and what he is going to say, I am not aware, and he has not told me.

Senator ISNOR: Neither am I aware of what he is going to say. I think he will talk on section 53 and the freight rate sections, 334 to 337 and I would not like to see these passed now. I would ask that they stand.

The ACTING CHAIRMAN: I rather lean to the idea. We can go back on them, because we will not be through.

Senator PHILLIPS: In regard to the point by Senator Isnor, he was able to calculate what the deficit would be, without anything for variable costs. Following that theory on, to my mind you should be able likewise to calculate what the railways need to make a reasonable profit, without taking in a figure of 150. I am just reversing the method and saying that if you know what they would lose you must be able to calculate what market they need in order to make a profit.

Mr. COPE: You mean, the average markup?

Senator PHILLIPS: Yes.

Mr. COPE: This is mathematically possible, but the problem is that all forms of traffic would not be able to bear that size of markup. Bulk commodities, for example, by and large, would not be able to absorb markups of anything like that—the examples I think of are sand and gravel, cement, iron ore, and grain.

Senator PEARSON: Potash.

Mr. COPE: These kinds of commodities would not bear anything like that markup.

Senator PHILLIPS: You did not take that into account when you made your statement?

Mr. COPE: That statement was just a measure of variable costs against revenue.

Senator PHILLIPS: This is all I am looking for.

Mr. COPE: In any event, I think the one meaningful comment I might add here is that the commission is directed by this bill to review this formula and to report on it after four years functioning, and if there are problems associated with it, presumably they will have some solutions to put forward.

Senator BENEDICKSON: But underlying everything is there a basis that rates will be compensatory?

Mr. COPE: Yes, clause 334 specifies that rates will be compensatory except where Parliament has decreed otherwise.

Senator BENEDICKSON: Does that refer to Crows Nest rates?

Mr. COPE: Yes, and to other rates in the Atlantic provinces that are frozen.

Senator BENEDICKSON: Which are alleged to be not compensatory?

Mr. COPE: Yes.

The ACTING CHAIRMAN: We are standing section 53.

Section 54?

Mr. BALDWIN: Section 54 really needs to be taken in conjunction with sections 55, 56 and 57, if I may comment on these.

These deal basically with the matter of passenger tariffs, and again they tried to adopt the principle already described with regard to freight rate tariffs.

Section 54 provides basically that the railways have general freedom to set passenger tariffs. However, the commission may intervene in cases where it is felt there is a monopoly situation applying in regard to passenger movement, to deal with tariffs in that connection, or to deal with commuter tariffs.

Section 55 provides an appeal in regard to passenger tariffs, if the public feels that a passenger tariff is not satisfactory.

Sections 56 and 57 provide simplified procedures for the filing of passenger tolls.

The ACTING CHAIRMAN: Sections 54, 55, 56 and 57?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: That brings us down to section 58, which simply repeals. What do these sections deal with?

Mr. BALDWIN: Under the old system, this dealt with certain matters of joint tariffs, placing a burden of proof on the railway in regard to relationship between costs and rates for joint haul movements, and they were not considered to be consistent with the new recommendations of the MacPherson Commission. In fact the sections were considered superfluous.

The ACTING CHAIRMAN: Section 58?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 59?

Mr. BALDWIN: This section, was referred to this morning by honourable senators and by the minister. It preserves the provisions of any existing statute with regard to the movements of freight through the Maritime ports.

The ACTING CHAIRMAN: Section 59?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 60? That is a repeal.

Mr. BALDWIN: This is repealing a heading and section dealing with freight classification, which is no longer required.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 61?

Mr. BALDWIN: Section 61 repeals that section dealing with special development rates. It is no longer needed because the railways can put in developmental rates without a new section.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 62?

Mr. BALDWIN: Section 62 is merely the clarification of something in the Railway Act, dealing with the movement of mail and the carriage of armed forces. The section has been revised to deal in separate subsections with rates for the carriage of mail, the carriage of armed forces and their baggage, equipment and stores. The only basic change is to ensure that such rates have to be compensatory.

Senator PEARSON: I would like to know if this section will cover provincial peace officers as well as others.

Mr. BALDWIN: Yes.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 63?

Mr. BALDWIN: This refers to the period during which the railways needs to retain unclaimed goods, during the period between advertising and sale.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 64?

Mr. BALDWIN: Section 64 is the repeal of sections no longer necessary, dealing with tolls and tariffs on railway bridges. A new section 365, is provided giving the commission power to exercise with respect to express tolls and express tariffs the powers it has in respect to freight tolls and freight tariffs.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 65?

Mr. BALDWIN: This is an amendment to section 367, to provide that express tariffs must be filed before carriage, and it eliminates the existing reference to tariffs being disallowed or suspended by the board, because the commission will not have that power under the new legislation.

The ACTING CHAIRMAN: I see a change in relation to express tariffs. You cannot charge them before you file.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 66?

Mr. BALDWIN: This amendment was requested by the Canadian Standards Association. It deletes a previous specific reference to a specific height for wires and cables along streets and highways, telephone and telegraph lines, making it possible to deal with them in a more flexible fashion, in accordance with arrangements which may be approved from time to time by the Canadian Standards Association.

Senator ISNOR: That can only be applied to the new lines, can it not?

Mr. BALDWIN: Yes, sir.

The ACTING CHAIRMAN: Is section 66 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 67.

Mr. BALDWIN: Because of the comprehensive changes regarding rate regulations in eliminating the old clauses in the Railway Act, we eliminated their



coverage of telegraph and telephone tolls, which are under the Board of Transport Commissioners. Now, since no change is contemplated in that connection, it has been necessary to restore those clauses for purposes of jurisdiction over telegraph and telephone tolls. That is the basic purpose of section 68.

The ACTING CHAIRMAN: There is no change?

Mr. BALDWIN: No.

Senator BENEDICKSON: They go back to this new board?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: We will deal now with section 68 on the top of page 57.

Mr. BALDWIN: But that is the section I was just talking about, sir.

Mr. COPE: I do not think they have section 67, then.

Mr. BALDWIN: Did I miss a clause, then, in dealing with the telegraphs and telephone tolls?

The ACTING CHAIRMAN: No, section 67 is the one dealing with telegraphs.

Mr. BALDWIN: Section 68 does the same thing, actually. They are both the same kind of thing.

The ACTING CHAIRMAN: All right. Is section 67 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 68?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Now, section 69 on page 58.

Mr. BALDWIN: Section 69 requires the commission to establish or review at regular intervals the uniform classification of accounts which the railways use. So this is brought up to date with current practice.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

Senator BENEDICKSON: I am sorry, but we have gone from 67 to 68 without my observation. With respect to telephone companies, is there any activity within the department *vis-à-vis* the provinces to try to bring these companies under some jurisdiction, one or the other? Is there anything new in this?

Mr. BALDWIN: Not at the present time.

The ACTING CHAIRMAN: Is section 69 on page 58 carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Now, section 70.

Mr. BALDWIN: This is a lengthy clause that establishes the procedure which the commission is supposed to follow in dealing with costing matters which, of course, are going to be of considerable importance in determining whether a branch line or a passenger service is losing money and whether a subsidy is to be paid and so on.

The ACTING CHAIRMAN: This is new. What is the pertinence of it?

Mr. BALDWIN: This is new, yes.

Senator PEARSON: It also refers to air and buses, and so on.

Mr. BALDWIN: It refers to any mode of transport which may be brought under the new commission, yes.

The ACTING CHAIRMAN: Are there any particular provisions there that we should note?

Mr. BALDWIN: I think the most important provisions are on page 60, dealing with the substantial emphasis on the requirements to hold public hearings where changes are proposed.



The ACTING CHAIRMAN: That presupposes that you start out with the system of costing.

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: Then any departure from that would require public hearings.

Mr. BALDWIN: That is right.

The ACTING CHAIRMAN: Who establishes the system?

Mr. BALDWIN: In the first instance the commission.

The ACTING CHAIRMAN: I see. I suppose that that in itself might involve a public hearing.

Mr. BALDWIN: It could, although in the comments we received in the discussions with provincial representatives it was suggested, for purposes of a starting point, that we should use very much what has been done by the MacPherson Commission in this regard.

The ACTING CHAIRMAN: Section 70 carries?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: That takes us through to the bottom of page 61 to section 71.

Mr. BALDWIN: Clause 71 is a small amendment requested in order to strengthen the ability of railways to deal with trespass by skidoos. We have had quite a lot of difficulty in some areas.

The ACTING CHAIRMAN: You mean skidoos that run along the railway line?

Senator PEARSON: They get them going up and down the lines.

Mr. BALDWIN: People have been killed in a few cases.

The ACTING CHAIRMAN: Carried?

Senator BENIDICKSON: No. Let us take a look at this first. In my little community there are a thousand skidoos. Let us just read the section. We are going to have a winter festival a month hence, and we will have 500 skidoos from the United States.

Senator McDONALD: Are you going to hold the festival on the railway track?

Senator BENIDICKSON: I certainly hope not. All right.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 72 on page 62.

Mr. COPE: This is a revision of provisions in the existing Railway Act with respect to unlawful rebates or concessions. It reinstates the clauses required. It removes certain others.

Oh, yes, section 436 as presently set up in the Railway Act also prohibits unjust discrimination and this is a concept which has been eliminated by the new philosophy set out in the bill. Other than that it just reinstates the provisions against the giving of illegal rebates.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 73.

Mr. BALDWIN: 73 is a consequential change in the field of rate regulations, which eliminates reference to competitive express tariffs.

The ACTING CHAIRMAN: Carried.

Mr. BALDWIN: Section 74 relates primarily to what is known as the "bridge subsidy," a special payment that was authorized some years ago with regard to the movement of traffic across northwestern Ontario. This subsidy is now eliminated in the legislation, because of the new provision for subsidy arrangements contained in other clauses, but in providing for its elimination so that the effect

on rate changes will be kept to a minimum and the impact will not make itself felt all at once, provision is also made that any rate adjustments consequential upon the elimination of the subsidy should take place in three steps over a three year period.

Senator BENIDICKSON: As I understand it, this gave to the Canadian National Railway alone an advantage of something like \$2½ million last year and the year before.

Mr. BALDWIN: It could be.

Senator BENIDICKSON: Well, who is going to absorb this \$2½ million henceforth?

Mr. BALDWIN: It will be absorbed in the general subsidy clause, sir, which you will see, when we come to it later. It is the new transitional subsidy which is to carry the railways until any payments of special subsidies on account of uneconomic services are developed.

Senator BENIDICKSON: But will shippers in northwestern Ontario, in the bridge area particularly, and fairly soon, absorb the results of this?

The ACTING CHAIRMAN: You mean have a higher rate because of this change?

Mr. BALDWIN: In some cases that could be so, but this is why we have provided the three year period, which really goes up to the end of four years. Rate adjustments must be gradual rather than be made all at once.

Senator BENIDICKSON: But the bridge feature, which was to prevail with respect to the area between Winnipeg and the other terminal—perhaps it was Sudbury or the Lakehead, I do not remember—is abandoned, and over a three-year period the shippers will have to pay for it.

Mr. BALDWIN: It is abandoned in one sense. In another sense it is swept up in the transitional subsidy, which provides for a large overall declining subsidy. But because the original bridge subsidy was specifically related to a rate situation in a given area, the railways would be free when the subsidy disappears to make certain rate adjustments, if they considered this necessary, and the three-year phasing out was therefore put in in order to ease any impact that might occur so far as the shippers were concerned.

Senator BENIDICKSON: I do not quite understand how it is going to soften the blow, but I want my colleagues, the senators, to realize that since 1952—I believe that was the year—there has been this so-called bridge subsidy.

Mr. COPE: It followed the Turgeon report.

Senator BENIDICKSON: Which I recollect gave out of the Treasury to at least one railway company, the CNR, about \$2½ million last year. I assume the CPE would get a little less, but if this is not any longer to be legislatively paid, presumably the shippers in this area are going to have to pay, is that correct?

Mr. BALDWIN: The MacPherson Commission recommended abolition of this subsidy and made a finding that it really was not working very well.

Senator LEONARD: Does not subsection (2) at the top of page 63 authorize the payment of subsidies?

Mr. BALDWIN: It authorizes increases in rates in easy stages.

Senator BENIDICKSON: But I don't see why we should necessarily approve of this.

The ACTING CHAIRMAN: How do the transitional subsidies work in this?

Mr. BALDWIN: All general subsidies have been abolished, and there is a single transitional subsidy which is mentioned. The payments start at the present payment to the railways and decline over a period of years. In that time their earning power should be increased and this will offset the loss.

Senator BENIDICKSON: Does the deputy minister contemplate that if the railways get \$2½ million a year out of this now the burden will be transferred to somebody else? Would it be transferred to shippers across the country or would it be specifically transferred to shippers within that particular bridge area.

Mr. BALDWIN: It may come from increased earning power due to the greater freedom to compete or due to various other reasons. In fact we think the greatest increase will come in terms of increased earning power through less stringent regulatory procedures generally across the country.

Senator BENIDICKSON: Not necessarily a direct impost on the shippers in the bridge area?

Mr. BALDWIN: Not necessarily increased rates at all. Reduced rates may produce an increase in traffic in some cases.

The ACTING CHAIRMAN: On page 63 you deal with certain increases.

Mr. BALDWIN: This is the new transitional subsidy clause.

Senator McDONALD: As I understand it, in 1967 you will pay \$110 million to the railways to compensate them for the general losses across the nation, and this sum will decline each year up to 1975. After that I presume there will be no further subsidies paid in this fashion.

Mr. BALDWIN: No, except for special subsidies that may be voted if, say, the Canadian Transport Commission so recommends in connection with, say branch lines.

Senator McDONALD: But there would be no general subsidy paid beyond 1975?

Mr. BALDWIN: No, only special subsidies.

Senator McDONALD: And any subsidy paid after that date will be paid on the basis of special consideration?

Mr. BALDWIN: That is right. It may be, for example, on a given movement of commodities or for some reason like that.

The ACTING CHAIRMAN: In the interim you could have special subsidies?

Mr. BALDWIN: Yes, but they are deductible from the transitional subsidies.

Senator KINLEY: On page 44 you say:

For each of the years 1967 to 1974, inclusive, the Commission shall calculate the normal payment that would have been made to a railway company if the following sums were available to be divided among eligible companies, namely:—

And then you give a list of amounts. Have these amounts been set arbitrarily, or where do they come from?

Mr. BALDWIN: The amount being paid is \$110 million. We started from the present level and we calculated a given percentage of reduction each year, this being, if you will, a general approach to try estimating the period of time the railways would need to improve their earning power and to allow the new special subsidies to be determined.

Senator KINLEY: Supposing the sums are not available?

Mr. BALDWIN: When you come to subsection (4) you will see the consequential relationship to subsection (2).

Senator KINLEY: Is that on page 64?

Mr. BALDWIN: Yes.

Senator KINLEY: The Minister of Finance may pay this out?

The ACTING CHAIRMAN: You will find that under the authority to pay out.

Senator KINLEY: And this is an arbitrary figure here?



Senator BENIDICKSON: Senator McDonald raises the question of the termination of this very substantial subsidy by 1975. Will the deputy minister comment at all on the relationship of this to the fact that with respect to the CNR in 1952 we decided legislatively that we would not automatically buy their 4 per cent preferred stock after nine years, I think it was, nor would we forgive them interest on \$100 millions loaned, after ten years. Is there any relationship to this being extended?

Mr. BALDWIN: Not particularly. The 1952 provision has been extended year by year in the Financing and Guarantee Act in any case, and there is no particular relationship to this clause.

The ACTING CHAIRMAN: If you look at page 65, section 470, there is a heading "Grain Products Defined".

Mr. BALDWIN: This is a new section which relates to the movement of grain products, and I shall ask Mr. Cope to explain that.

Mr. COPE: Section 470 provides protection to the grain and grain products which have been tied historically to the Crowsnest rate level, and provides for product movements to the points specified. It provides that the railways would never be entitled to any subsidy if they disturb the rate levels prevailing on 31 st December, 1966—if they adjusted these rates in any way.

The ACTING CHAIRMAN: You mean up or down?

Mr. BALDWIN: Up primarily.

Senator McDONALD: Where is the definition of grain, or is there one?

Mr. BALDWIN: Subsection 3 on the next page.

Mr. COPE: There has been a definition of grain by the Board of Transport Commissioners which has been recognized in the jurisprudence over the years. It has been recognized to include flaxseed, and the provision on page 66 indicates that rapeseed will take the rates applicable to flaxseed so long as the conditions maintain.

Senator McDONALD: Is that the only definition of grain in the act?

Senator KINLEY: Section 470 on page 65.

The ACTING CHAIRMAN: I would think that "grain products" has a meaning to the ordinary individual, and those who are interested in the trade would know what it means.

Senator McDONALD: The reason I asked is that there has been some difficulty in having rapeseed recognized as a grain. When I think of grain I certainly think of rapeseed, but this has not always been the case, and I wanted to know if there was a definition of grain in the act, and apparently there isn't.

Senator BENIDICKSON: What about page 66?

Senator McDONALD: Section 66 says rapeseed is a grain, but where does it define "grain" and say whether it is wheat, barley, rape, flax, etcetera?

Senator LEONARD: This is particularly applicable with respect to the Crowsnest Pass rates because at the time they were defined originally there was no carriage of rapeseed.

Senator McDONALD: Has it now been brought in under the Crowsnest Pass Agreement, and there has been considerable controversy about that, or is it only brought in under this?

Mr. COPE: Mr. Neilly reminds us that the definition of "grain" is taken to the commodities covered by the grain tariffs of the railways. And section 328 deals with rates on grain as defined there. The definition of "grain" and the definition of "grain products" were not covered in section 328, or rapeseed. This section indicates that "grain" will include rapeseed for the purposes of railway freight rates.

Senator BENIDICKSON: Of the Crowsnest rates?



Mr. BALDWIN: And tied rates.

Senator BENIDICKSON: They will be included.

Senator McDONALD: Rapeseed is now considered grain under the Crowsnest rates.

The ACTING CHAIRMAN: There was a subsection added to the Railway Act in 1960-61, and this is section 328(8), which says that "grain" includes rapeseed.

Mr. COPE: That provision is reinstated under subsection 3 of section 470.

Senator McDONALD: That is the reason you specify rapeseed in this act?

The ACTING CHAIRMAN: Yes. Any other questions?

Carried.

The ACTING CHAIRMAN: Now we come to section 75.

Mr. BALDWIN: This is merely a clarification section that makes it clear that the new provisions of the present legislation do not in any way affect the workings of the Maritime Freight Rates Act or the Terms of Union between Newfoundland and Canada in so far as they relate to transportation.

The ACTING CHAIRMAN: Carried?

Carried.

Senator SMITH (*Queens-Shelburne*): Before we leave that, what is the significance of the very last part of that section 34 that you have just read part of:

...or by subsection (9) of section 319 or section 323 or 329 of the Railway Act.

What is the significance of that part?

The ACTING CHAIRMAN: I will tell you in a minute.

Mr. BALDWIN: This is the provision of similar facilities for other truckers as well as railway-owned trucks.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 76 we are dealing with now.

Mr. BALDWIN: This is the repeal of the CN-CP act as recommended by the MacPherson Royal Commission as being no longer suitable to the present type of operation.

Senator BENIDICKSON: Is that the old pooling act?

Mr. BALDWIN: Yes.

Senator BENIDICKSON: Has this anything to do with certain pool train arrangements or are they all abandoned?

Mr. BALDWIN: They are all abandoned.

Senator BENIDICKSON: The 1965 Canadian National Railways report refers to carrying on co-operation with the Canadian Pacific Railway in any way they could.

Mr. COPE: I think this has been reported in their annual report in the same form now since about 1940, each year.

The ACTING CHAIRMAN: Section 76 carries?

Hon. SENATOR: Carried.

The ACTING CHAIRMAN: Section 77?

Mr. BALDWIN: This is merely to be consistent with the amendment previously approved which would allow the CNR to build branch lines up to 20 miles in length without having to come to Parliament.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 78?

Mr. BALDWIN: Section 78 extends the present provisions of the railway grade crossing fund, which otherwise would have run out, for a period of three years. That is the fund that makes it possible to make grants for grade separation.

The ACTING CHAIRMAN: This would have come in any event?

Mr. BALDWIN: Yes, this would have come in in any event.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 79?

Mr. BALDWIN: This is to prevent any gap between the old and new systems of rate regulation. That is the basic effect of the clause here.

The ACTING CHAIRMAN: It continues the existing rates?

Mr. BALDWIN: Yes, until something else happens.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: That brings us to Part VI.

Senator McDONALD: Before we leave this part, supposing by 1980, after all the general subsidies have been exhausted, the Canadian Pacific Railway would show a profit of "X" number of dollars on their railroad operations, could they then receive a subsidy on a particular branch line?

Mr. BALDWIN: If that branch line was operating at a loss and the commission had ordered the railway nevertheless to keep that operation going, they could be eligible for a subsidy.

Senator McDONALD: Would they automatically receive the subsidy?

Mr. BALDWIN: They would have to apply for it.

Senator McDONALD: But no matter what their profits might be on the total Canadian operation?

Mr. BALDWIN: The same would apply to the CNR.

The ACTING CHAIRMAN: Part VI, Transitional Provisions. Section 80?

Mr. BALDWIN: These are provisions which really take care of the transfer of the present organizations—the Board of Transport Commissioners as dealt with in section 80, and later the Air Transport Board and the Maritime Commission—to the new organization, and give the necessary protection to both the members of these boards and their staffs. Section 81 protects the position of the present Chairman of the Board of Transport Commissioners under the present legislation, which gives him certain rights *vis-à-vis* the Exchequer Court.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 82 does the same thing in relation to the Air Transport Board?

Mr. BALDWIN: That is correct.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 83?

Mr. BALDWIN: The same thing, the Air Transport Board.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Sections 84 and 85?

Mr. BALDWIN: The Maritime Commission.

Senator BENIDICKSON: Can I say that I am worried about the concept of putting all these boards into one big board. Are we gaining in efficiency or are we going to have the big board develop into the same old thing of committees representing air, maritime and railways? I have sympathy for retaining the members of these various commissions, but where are we going to get unification?

Senator LEONARD: Or integration.

Senator BENIDICKSON: That was a dirty word in the other place. Will they just work this out, or are they all going to be members of one great big household but, in effect, carry on as they did before—maritime, rail and air?

The ACTING CHAIRMAN: Senator, I would say that the design of the bill is not intended to produce the kind of results you suggest might occur. There will be one commission, and those who are presently on these different boards will become members of that commission. There will be added members of the commission. There will be the committees of the commission who will be charged with particular duties in relation to the various headings. It would seem that a unity may be achieved. Of course, you will have to see how it works out.

Senator BENIDICKSON: Well, I am very concerned.

The ACTING CHAIRMAN: I have not the crystal ball here, but I think they have spent a lot of time on this, and the commission has made a report. It is worth giving it a trial.

Section 84 carries?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 85?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 86, the saving clause.

Mr. BALDWIN: This protects the tenure of office of the present appointees to the three agencies.

The ACTING CHAIRMAN: Yes. Does section 86 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 87 on page 71.

Mr. BALDWIN: This allows the new commission to carry on with any of the specific financial functions which may have been vested in the three existing agencies and which have not been completed at the time of transfer.

The ACTING CHAIRMAN: But it does not go further than that, does it? It deals with the—

Mr. BALDWIN:—the Appropriation Act covering the Estimates for 1966-67, and any Appropriation Act passed before the coming into force of Part I.

The ACTING CHAIRMAN: Yes. Does section 87 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 88?

Mr. BALDWIN: This is a similar clause relating to other duties and powers.

The ACTING CHAIRMAN: That is in relation to whatever the status may be of proceedings?

Mr. BALDWIN: That is right. Well, clause 89 covers pending proceedings specifically.

The ACTING CHAIRMAN: Yes.

Mr. BALDWIN: It allows them to be taken on by the new commission.

The ACTING CHAIRMAN: Do sections 87 and 88 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 90 on page 72?



Mr. BALDWIN: This is also to cover any possible hiatus in the regulations, rules, orders and directions presently made, and that existing agency documents carry on until replaced by new documents of the commission.

The ACTING CHAIRMAN: That applies also to section 91?

Mr. BALDWIN: Yes, section 91 covers the same thing.

The ACTING CHAIRMAN: Do sections 90 and 91 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 92?

Mr. BALDWIN: Clause 92 provides that if Parts II, III and V or any of them, come into force before Part I comes into force then any reference in them to the Canadian Transport Commission shall be deemed to be a reference to the Board of Transport Commissioners for Canada.

The ACTING CHAIRMAN: Does section 92 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 93.

Mr. BALDWIN: Clause 93 is a specific recommendation that was put before the Minister by the Air Transport Board, and it emphasizes the definition of "hire or reward" in respect of a commercial air service requiring a license from the Air Transport Board. In certain cases situations had arisen where without obtaining a license from the Air Transport Board or without being required to obtain a safety operating certificate from the department, owners of large aircraft were "dry" leasing aircraft—that is, leasing aircraft without crew. They were operating the aircraft on a "dry" lease basis, and at the same time having the aircrew on their own payroll transferred temporarily to the payroll of the lessee of the aircraft. By this method it was possible, in effect, to operate a charter commercial service without having to meet the safety requirements of the department. The definition is put in it to make it possible for the Air Transport Board to deal with that particular type of situation.

The ACTING CHAIRMAN: In other words, this is to regulate it?

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: Does section 93 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 94 has to do with the repeal of existing statutes.

Mr. BALDWIN: Yes, as set forth in the schedule.

The ACTING CHAIRMAN: Yes. Does section 94 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 95, the coming into force. You have different Parts coming into force on days to be fixed by proclamation.

Mr. BALDWIN: That is right. This gives the Governor in Council flexibility with regard to the timing of the bringing into force of certain sections.

The ACTING CHAIRMAN: Shall section 95 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Now, we have stood—

Mr. BALDWIN: There is the schedule.

The ACTING CHAIRMAN: The schedule was approved by approving section 94.

Mr. BALDWIN: Yes.

The ACTING CHAIRMAN: We have stood section 53, and the committee resumes its meeting at 10 o'clock in the morning to hear Mr. J.J. Frawley, and to make its final decision as to reporting the bill. I think we have got through a heavy job with despatch.



Senator KINLEY: Mr. Chairman, how far does this affect the Canadian Pacific Steamships? Are they controlled by this legislation?

Mr. BALDWIN: No, they are registered in Britain. They would not be controlled under the present arrangements. There would have to be additional legislation for that.

Senator KINLEY: They are not registered in Canada?

Mr. BALDWIN: No.

Senator KINLEY: They are British ships?

Mr. BALDWIN: Yes.

Senator ISNOR: Would you mind turning to page 56, Mr. Baldwin.

Mr. BALDWIN: Yes, sir?

Senator ISNOR: The "height of wires" deals only with telephone and telegraph lines; is that correct?

Mr. BALDWIN: That is correct.

Senator ISNOR: Does that refer to the group of lines that run through Nova Scotia and New Brunswick?

Mr. BALDWIN: The only jurisdiction existing in the Railway Act is with respect to telephone and telegraph lines, and that is what we are changing. No action is being taken with respect to anything else.

Senator KINLEY: There is nothing in the Lord's Day Act that is different, is there? I am referring to page 75 where it says:

Paragraph (X) of section 11 is repealed and the following substituted therefor:

"(X) any work that the Canadian Transport Commission, having regard to the object of this Act and with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any transportation undertaking."

They do that now, do they not?

The ACTING CHAIRMAN: Mr. Baldwin tells me that the word "railway" now occurring in that section is being changed to transportation undertaking. That is the only change in language, is it not, Mr. Baldwin?

Mr. BALDWIN: Yes.

Senator BENEDICKSON: Referring to what Senator Isnor brought up about telegraph and telephone lines, I recall the answer of the witness, but are we then to understand that with respect to communications that have superseded this type of communication we depend upon other federal statutes such as the Radio Act?

Mr. BALDWIN: Yes, that would be the case. If it were a radio microwave system, there is adequate power under the Radio Act to deal with that.

The ACTING CHAIRMAN: The meeting is adjourned until 10 o'clock in the morning.

The committee adjourned.

WEDNESDAY, February 8, 1967.

Senator SALTER A. HAYDEN, *Acting Chairman*, in the Chair.

The ACTING CHAIRMAN: Honourable senators, I call the meeting to order. We had considered yesterday all sections of the bill except section 53, which we took. We have assembled this morning for the purpose of hearing Mr. J. J. Frawley and then to conclude our consideration of the bill.

Mr. Frawley, would you care to make your statement at this time?

Senator LEONARD: Mr. Chairman, I wonder if I might interrupt for a minute in order to introduce Mr. Frawley. He is counsel at Ottawa for the Province of Alberta. I like to think of him on a rather different stage, however, and that as my old classmate at the University of Toronto and at law school. So I have a special word of personal welcome to Mr. Frawley on this occasion, if you will permit me to say so, Mr. Chairman.

The ACTING CHAIRMAN: Yes. I can assure you, senator, that Mr. Frawley is not unknown to the rest of us here.

**Mr. J. J. Frawley, Counsel for the Province of Alberta:** Thank you. Mr. Chairman and honourable members of the Senate, I am here this morning to protest against only two sections of Bill C-231, section 16 and section 336.

The ACTING CHAIRMAN: Mr. Frawley, you refer to section 336; that is part of section 53 and you will find it at the bottom of page 46.

Mr. FRAWLEY: When I said section 336, I should have said section 53 which enacts the new section 336. The two sections I am concerned with, then, are section 16 and section 336 which will be enacted if section 53 of this bill is enacted.

The ACTING CHAIRMAN: Section 16 is on page 10 and section 336 is on page 46.

Mr. FRAWLEY: I think in order to discuss these two sections as they should be discussed I should talk to you for a moment about the ten years of freight rate increases between 1946, immediately following the war, and 1958. I think that the setting up of the Royal Commission itself cannot be understood except in the light of those ten years of freight rate increases and, of course, the bill cannot be understood except in the light of the Royal Commission Report.

I have set this out in my brief and, as you choose or as you direct, Mr. Chairman, I can either read that opening part of the brief before I come to a discussion of what I think is wrong with section 336 and section 16, or I can summarize it.

The ACTING CHAIRMAN: Perhaps you could summarize it.

Mr. FRAWLEY: Yes. For ten years there had been applications by the railways for freight rate increases. Those increases were always authorized by the Board on what came to be known quite properly as horizontal percentage increases. Now, the horizontal percentage increases undoubtedly bore more heavily on the long haul provinces. As a matter of fact, they apparently did not bear heavily on Ontario and Quebec at all, because we never saw Ontario and Quebec represented before the Board of Transport Commissioners during those ten years of freight rate increases. They were not there because their shippers and receivers apparently were not detrimentally affected by those increases.

I can assure you that every other province in Canada was there from the beginning to the end, the end being in 1958.

Now, the cumulative effect of these horizontal percentage increases extending over ten years was that the level of freight rates had increased by 157 per cent at the time of the application, and the last application was the one made in the fall of 1958. That application was for a 19 per cent increase.

As I say in my brief, it is not too difficult to understand the uneven burden dollarwise of these percentage increases because, as I say, increasing a \$5 rate from Toronto to Halifax or Edmonton by 15 per cent meant a contribution of 75 cents to the railways' financial need, but only a contribution of 30 cents on a \$2 rate from Toronto to Sherbrooke. Then, of course, the situation was a little worse at times because where the competitive rate structure prevailed either the rate were not increased at all or where such increases were put on they were taken off again as competition dictated.

In 1958 finally the end was reached, and I mean the end in more ways than one. In that year the railways applied for a 19 per cent increase. We went there, not opposing or protesting against the need which the railways had for the 19 per cent, because they made out a case based on increased operating costs, but we went there protesting most vehemently against any more horizontal percentage increases in the then state of the Canadian freight rate structure. There had been so much distortion in the freight rate structure at that time as a result of a decade of increases that we felt something had to be done. I recall we sought what might almost be called an injunction from the Privy Council to stop the proceedings until we could state our case against any kind of increase in the then freight rate structure. We realized the railways needed this, or at least such as they could prove, and they ultimately proved 17 per cent. If you turn to page 2 you will see what I mean by distortion, and I have taken what I have put in there from Exhibit 58-22 of the Canadian Pacific Railway Company in support of its case which showed an estimated result of a general freight rate increase of 19 per cent with 25 cents on coal and coke. I should point out that the first column is the percentage of total revenue, and the estimated total revenue from competitive rates was \$581.7 million dollars, or 12.32 per cent, and that is the figure you will find in my brief. Here I just want to show the comparison, but the percentage of the total yield to be expected and estimated from that increase was 17.67 per cent, and I want to say that that was indeed an estimate because, as I have said, and it was a fact in many instances, the railways would put an increase on the competitive rates and then find through the exigencies of the situation that they would have to take them off again. They estimated that of the total 100 per cent of the increase, 17.67 per cent would come from competitive rates.

The next item on that page I want to stress particularly is "agreed charges". The percentage of total revenue from this was to be 11.75 per cent of the total revenue, but you will see that Canadian Pacific Railway estimated that they could only get  $1\frac{3}{4}$  per cent of the total 100 p. 100 of the 19 p. 100 increase from the agreed charges.

Export grain rates, being statutory rates, are not subject to increase and so here it was nil.

International rates were not expected to yield anything. That perhaps should be explained; the increases there came about when the United States railroads made their increases and the Canadian railroads followed suit, but not until then. When they went before the Board of Transport Commissioners the international rates were not shown as yielding any increase.

Senator ISNOR: What year was that?

Mr. FRAWLEY: 1958. Now, there are two important figures on this sheet, the class rates and non-competitive commodity rates and these are particularly interesting particularly to the long haul provinces. The Canadian Pacific Railway estimated and placed before the board the statement that non-competitive rates and class rates were expected to yield almost 74 p. 100 of the 100 p. 100 of the 19 p. 100 increase, whereas agreed charges were to be practically negligible; they were hardly to yield any part of the increase at all.

It was in that situation that we went to the Privy Council—that is all the provinces except Ontario and Quebec. We felt we had reached the end of our endurance to bear these disproportionately applied increases. That is what was wrong; we did not object to the increases themselves, but to the disproportionately applied increases. We in the Western and Atlantic provinces bore the full brunt of the increases, while in other areas, mainly the St. Lawrence Valley and Central Canada they were paying a disproportionately small share of that increase.

We were heard by the federal cabinet in the fall of 1958, and the federal cabinet agreed with us. They approved of the increases, and we did not expect



that they would do otherwise. One of the reasons for this was that there was a strike imminent at that time, and the freight rate increase had to be approved. The railways had made out a case for it, but the Privy Council agreed with us that something had to be done to remove the inequities in the freight rate structure which had come about because of these ten years of disproportionately applied increases.

They passed a statute and they set aside \$20 million from the federal treasury to be paid to the Board of Transport Commissioners annually to be applied to roll back the effect of these freight rate increases on all traffic on the class rates and commodity rates which I have demonstrated from the Canadian Pacific Railway's exhibit were expected to bear this inordinately large share.

That is what was happening for ten years; this picture that I show you was what had happened since 1946. They had built up to this stage, and finally the western provinces—and in the western provinces I include B.C.,—and the Atlantic provinces rebelled and went to the cabinet. The next thing that was done was they set up this Royal Commission on Transportation. There is no doubt about that; the commission was set up as a result of facts placed before the federal cabinet where we went by way of appeal against the 17 p. 100 increase. Certainly the railways did not seek the royal commission, and I think that is rather important when you look at the present situation. I think it is rather important; there wasn't anything wrong with the Canadian freight rate structure as far as the railways were concerned except for one notorious thing, the Crowsnest Pass freight rates. But we felt there were many things wrong. There is one distortion I want to mention in passing, and that is the fact that required Edmonton to pay \$1.80 a hundredweight for steel sheets and plates from Hamilton while Vancouver pays \$1.05, and the car goes right through Winnipeg and Edmonton to Vancouver. We pay \$1.80 and Vancouver pays \$1.05 from Hamilton. That is a distortion. I know there is a long history behind that, but that is a distortion in the structure which, so far as the Province of Alberta is concerned, if we live for another 100 years we will never be happy about it.

The royal commission was set up, and when you look at the terms of reference you will find one principal paragraph, and it is set down as paragraph (a). I have not the complete Order in Council here, but that was the main term of reference, and the term of reference was that the royal commission should consider and report upon—and I have quoted it at the top of page 4 of my statement:

inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities.

That is what the royal commission was charged to do, and I think that that must be kept constantly in mind when we are reaching a conclusion as to whether or not this bill removes the inequities in the Canadian freight rate structure.

It is my submission, of course, that it completely fails to remove the inequities in the Canadian freight rate structure, and that is largely due to the manner in which clauses 16 and 53 have been drawn.

I should not take up any time, really, discussing those parts of the bill with which Alberta has no real disagreement, because it would not be right. You people have more to do than listen to me praising the bill, but perhaps I should say that we have no criticism of the idea that there should be a super board, but actually we do not see much advantage in replacing the Air Transport Board, the Board of Transport Commissioners and the Maritime Commission with this super board.



You know from studying the bill that under the commission there will be set up a series of committees. There will be a railway committee; there will be an air transport committee; there will be a water line committee. Of course, there will also be a commodity pipelines committee, and I have a short word to say about that. There will also be a section dealing with interprovincial highway transport; but the principal committee will be the railway committee. Actually, I see no difference between the way in which that committee will operate and function and the present Board of Transport Commissioners: and there is no great contention there should be. I say that is basically why we see no great advantage. Of course, there may be other reasons. A great deal more money is going to be put into that new commission than is put individually into these other existing agencies, and perhaps more research will be done. The new board will have a great staff of economists and statisticians, and if they have enough good cost analysts I think the status of the commission will perhaps, for that reason alone, be an improvement on what we have at the moment. I say that in passing.

The Minister of Transport sees a lot of advantage in this super commission and, as I say in my brief, Alberta will live with the new commission.

I might say too, just in passing, that the setting up of this new commission is a departure from the recommendations of the MacPherson Commission. I have no quarrel with that in principle, and it would not have occurred to me even to mention it, except for the fact the minister held steadfastly to what the commission recommended in the matter of maximum rate control, with which all the provinces in Canada are so much concerned, and he held to what the royal commission had recommended in the matter of that aspect, in face of protests from every province in Canada, from British Columbia to Newfoundland, with always the notable exceptions of Ontario and Quebec.

The ACTING CHAIRMAN: Of course, the wisdom in the report may occur by instalments.

Mr. FRAWLEY: Yes, as you continue to read it. There is a lot of wisdom in the report, Mr. Chairman; of course, there is a great deal of wisdom. They had many knowledgeable people present briefs. Alberta had something to do with that, so had Manitoba, so had British Columbia, and so had the Maritime provinces. We brought very competent and knowledgeable people before the commission, and so when we look at this report we must have in mind that they received many excellent submissions, including, of course, many good submissions from the railways of Canada. They had good railway submissions, but I think they started to compromise at the end when they started to write the clause with regard to maximum rate control.

All I say about commodity pipelines is this and perhaps I can be excused for saying that if any province in Canada has had much to do with pipelines it is Alberta. If I may interject a personal word, if any one premier in Canada knows something about pipelines and has lived very close to the construction and operation of pipelines, it is Premier Manning of Alberta. I communicated to the Commons committee considering this bill the views of Premier Manning. Very simply stated, they were that the legislation respecting commodity pipelines was quite premature and could very well be deferred. I do not think there is an agency in the whole of Canada that is doing as much work in the matter of pipeline experimentation as the Research Council of Alberta; but, in any event, it was the view of the Alberta Government that this matter could very well be deferred.

We went one step further and we said if, as and when it becomes necessary to regulate and control pipelines, even commodity pipelines, that the regulation should be entrusted to the National Energy Board and not to the new transport commission.

Now, I am here to state Alberta's position, so I might as well state it frankly. This commission, I fear, is going to be to some extent railway oriented—more so, in any event, than the National Energy Board.

There is a rate which carries coal from the producing regions in Alberta to tidewater on the Pacific for shipment to Japan. That rate returns cost, variable cost, otherwise expressed as out-of-pocket cost, plus 84 per cent. That is in the face of American experience where export coal rates, on the average—the only rates we have comparable to rates which move coal to tidewater for furtherance to Japan—the average return above variable, or as it is sometimes called, the burden, is 7 per cent. But the coal operators of British Columbia and Alberta pay a rate which contributes variable cost plus 84 per cent. That rate has been before the Board of Transport Commissioners and has been the subject of complaint, and the Board of Transport Commissioners have accepted that kind of contribution to overhead.

So, I say—and I only say it in passing, because I am here principally to discuss these other matters—I simply say in passing it might very well be a commodity pipeline to move sulphur from Pincher Creek, Alberta, where the Shell Oil Company has large interests and have a company incorporated to at least consider the building of a pipeline, it may be—and I just take the figure out of the air—it may be considered that variable cost plus, say, 25 per cent would be a reasonable return over variable cost to move that sulphur from Pincher Creek to Vancouver. There might be violent disagreement with that, it might be said that the figure should be 10 per cent or 30 per cent. In any event, I think it is a little unsafe to entrust the regulation of commodity pipelines to a board which with equanimity would look at a coal rate which was 84 per cent above cost.

So, I say in passing that we in Alberta think that as and when commodity pipelines reach the point of reality and need regulation then the regulation should be entrusted to the National Energy Board.

Senator BROOKS: May I ask a question there? Would not that limit the carriage of, say, pulp or wood chips and so on if you left it to the National Energy Board rather than to the commission. It would be all right for sulphur—I can see that—but for commodities like coal would you not be limiting the quality of the carriage?

Mr. FRAWLEY: Senator Brooks, if you will allow that it would be acceptable with regard to sulphur then I think we have reached agreement. Once you get into any commodity movement then the National Energy Board, as I put it to the committee, would have to set up its own staff. At the moment they are very expert in the movement of oil and gas, and a lot of this is going to move in the form of a capsule in the middle of the oil or gas. There is a close relationship there, and we think that the National Energy Board is—

Senator BROOKS: If the situation remains as it is today I can see the strong point in your argument.

Senator KINLEY: Mr. Chairman, this percentage was arrived at in 1958. Do you not think that the increase in transportation by truck, and the population, has changed the aspect of all this, and that it is outmoded?

Mr. FRAWLEY: Senator Kinley, I would like to understand—I appreciate the fact that there has been a great change since 1958, but I am not sure what is being claimed in so far as anything I am saying is concerned.

Senator KINLEY: Since this was made there have been new ways of carrying oil and gas, and that changes the picture so far as Alberta and any other province is concerned. If I want to ship something from Boston I will call up the railroad and ask what they will charge. I know what the trucker will charge. The railway usually comes down and meets the trucker's charge. I have instances of that from Toronto and other places. If you are alert you can profit by it. I come from the Maritimes, and I know all about this. The Canadian National Railways have been



operating on a deficit. They owe a lot of money. A lot of money has been paid by the citizens of this country. Ontario and Quebec pay the majority of the taxes in Canada, Nova Scotia's income tax is about 5 per cent of that of the whole of Canada.

I was here in the days when Alberta was not so prosperous. I remember the days when they were struggling with their bond issues, but now they have become affluent, and they have a wonderful province. I hear criticism all along about the Crowsnest Pass Rates, and it is said: "Well, you can't change them". We said that you could not change the Inter-Colonial Railway because that was a feature of Confederation. But, when this company is losing a pile of money it seems to me that this is not the time to come here for lower rates. It is a time to allow the railway to earn more money so that it can pay its bills.

Mr. FRAWLEY: Senator, I must say this, that at the moment—and this may change—it is only the financial need of the Canadian Pacific Railway that is given any consideration in connection with various increases in freight rates. They are not going to go to the board anymore, so it may be that that particular criterion may have lost some of its force.

Senator KINLEY: You were talking about cost of sheet steel to Calgary. I have heard that for years. I have bought steel from England, from the United States, and from Hamilton, and there was a time when I could get it cheaper from Hamilton to Lunenburg than I could from Sydney to Lunenburg. I have run into that quite a bit. But, I do not think it would be a good time to try to make—if the business is no good then let us fix the business up, and put in another management, and so on, and enable it to make some money. But, do not try to say that one province—

Mr. FRAWLEY: Senator, I do not want you to think that there is anything wrong with Alberta, or with any business in Alberta. I am discussing the fairness or unfairness of the freight rate structure. I do not want to get into this business of steel sheets of \$1.80 versus \$1.05, because I could spend all of today and tomorrow in discussing that. I have lived with that for years and years. We have to accept it. It is unfair and unjust. I know what causes it—the Panama Canal. The reason why Hamilton sends steel sheets to Vancouver for \$1.05 is because they say that Vancouver can bring them in via the Panama Canal. How many steel sheets have gone from Hamilton to Vancouver by any other means than the railways? It is that potential competition that causes them to say that they have to give that rate.

The ACTING CHAIRMAN: Mr. Frawley, I am wondering how we have entered into a discussion of a particular freight rate. This bill has nothing to do with that.

Mr. FRAWLEY: Yes, and I must not excuse myself by saying I was asked questions about it.

Senator KINLEY: There is only one thing, Mr. Chairman, and that is that I think it is a principle that has been debated in the United States and Canada for a long time. One manufacturer should have the same opportunities as another, and so far as that goes I think this discussion is good.

The ACTING CHAIRMAN: Let me point out, senator, that this bill provides a method for establishing freight rates, and it provides rights to people who may be hurt by them. It does not deal specifically with the amount of a rate, and therefore we are on a side issue.

Senator KINLEY: I know, but Mr. Frawley says the people who he wants to decide that are the people he thinks will give the best deal.

The ACTING CHAIRMAN: Under this bill, the moment a railway files a rate, rights are provided to the shippers to contest it.

Mr. FRAWLEY: In any event, Mr. Chairman, I do not disagree with you at all, and I apologize. I have only one more minor matter to discuss. I said I would

discuss very briefly those parts of the bill with which Alberta takes little or no exception. I am on page 6 of this brief, and I am referring to interprovincial highway transport.

Now, federal regulation of interprovincial transport is not coming in at the moment. This bill merely makes provision in Part III that at some time later on proclamation the regulation and control of interprovincial highway transport may be committed to this new transport commission.

The ACTING CHAIRMAN: And I would think undoubtedly at that time you might require some legislation—some additional legislation.

Mr. FRAWLEY: Perhaps there probably would be a repeal of the existing statute which at the moment creates or constitutes the provincial regulatory boards as federal boards. That is true. That statute would probably have to be repealed when this is proclaimed. I say nothing about that. We know what the Privy Council said in the *Winner* case. We know what the law is. The Privy Council said that not only is interprovincial transport under federal control exclusively, but also the intraprovincial operations of an interprovincial enterprise.

Now, that is rather difficult. I think it is going to be rather difficult, but in any event there is a more serious matter, and that is that the Minister of Transport, or the Government of Canada, before they can proclaim this act must go to the provinces and must get virtually the consent—I do not mean consent in the strict legal way, but they must get the consent of the provinces, because the provinces own the highways on which this interprovincial transport will run.

That is all I think that needs to be said. I think that that can be negotiated, and I take pains here to say that although Alberta has no problem under the present statute whereby our provincial board is created a federal board for the regulation of interprovincial transport. We have had no problems in the courts or anywhere. I must admit that Ontario has had problems, and so has Manitoba, but we have not. So, we are living with it quite well, but that does not mean that when the Minister of Transport comes to Alberta to negotiate this thing he will be refused. I do not want to leave that impression at all.

Now, I come to Part V of the bill which deals with amendments to the Railway Act. There is a lot of space devoted in the bill to branch line abandonment. I do not want to minimize the importance of branch line abandonment because I know that in some provinces it is important. It is quite important to Saskatchewan, and it is important, perhaps, to Manitoba. It is not unimportant to Alberta, but I think I am not wrong when I say that branch line abandonment have not been the problem in Alberta that they have been in other parts of Canada. But, I say that that does not mean that we will not be alert. We will examine the situation as and when these applications for branch line abandonments come up.

I think the administration is to be commended. As I say at the top of page 7 of this statement, we have 331 miles in Alberta that are not frozen until 1975, and they could be the subject of applications at once. But I think the guidelines that have been laid down are good guidelines; they go a long way to require the commission to examine all of the physical and economic factors before ordering a branch line abandonment.

Now I would like to come to section 336. I am speaking only for Alberta this morning, but as a matter of fact this section was subjected to criticism by many witnesses who made statements to the Commons committee when this bill was before it.

The section first describes the kind of shipper that can invoke section 336. Perhaps I should say in capsule form that section 336 is intended to provide means whereby a shipper who complains about a certain rate can go to the commission, request a figure as to the cost of his movement, then depending on the kind of information he gets can then declare himself captive. The importance



of the word is merely that he must then become captive, commit all of his traffic then, just like under an agreed charge, to the railway.

Now, the statute defines who is this candidate for the fixing of a rate, who is the shipper that can go before the commission and ask that his rate be fixed—the maximum of his rate to be fixed. Well, it is a good definition, it is an improvement on the earlier definition, and I certainly want to give the Minister of Transport full credit for having improved that definition by putting one important key word in the opening lines of section 336. This is the kind of shipper that can go to the board to invoke this new procedure:

A shipper of goods for which in respect of those goods there is no alternative, effective and competitive service by a common carrier other than a rail carrier . . .

etcetera. The important word there is “effective,” and that word can only be understood and can only be assessed, appreciated, adopted and enacted after you have looked at what the report of the MacPherson Commission says about the kind of evil, the kind of situation this section was intended to cure.

Now, the MacPherson Commission certainly recommended that there be set up this maximum rate control.

My proposition is that if a rail rate is at a level where it returns variable cost and in addition say 400 per cent—I am not speaking for the 400 per cent—of those costs, then, even though there physically exists an alternative carrier by highway or water, that alternative competition is not “effective” competition. If the alternative competition were effective the rail carrier would not be able to exact a rate making such an excessive contribution above variable or out of pocket costs.

I said a moment ago that was my fundamental proposition, and it is today. It was for the relief of such a shipper that the MacPherson Report sought a remedy. I wish to call to the committee's attention two or three passages from the MacPherson Report in support of what I am putting to the committee.

This matter is dealt with beginning at page 92 of volume 2 of the Royal Commission Transportation under the sub-heading “Measures of Significant Monopoly.”

May I say here in passing that perhaps I might be excused for what might look like extensive quotations. Perhaps I must blame Mr. Pickersgill for that, because in the Commons committee when I read a quotation he thought I was rather limited, and he did what is done every day in all kinds of places, including the courts, he went back and read a little bit more leading up to what I had quoted. That is proper and acceptable.

Senator BROOKS: Could you give us some examples of situations of this kind?

Mr. FRAWLEY: Yes, I can give you examples, senator. At the moment I am just discussing the principle of the kind of shipper, any shipper, whether of coal from Alberta to Vancouver, sulphur from Vancouver to Alberta, or potash from Saskatchewan to Vancouver, any commodity which returns variable cost—any rate which is many times variable cost—and that comes from the MacPherson report. When you say many times variable cost that is just another way of saying it makes an excessive contribution above variable cost. That is what the MacPherson Commission said was an indication of significant monopoly, and they said that is the kind of shipper that can have the excessive contribution examined and a rate determined in lieu of the rate he is paying.

The ACTING CHAIRMAN: What you are saying is, Mr. Frawley, that if between two points you have a rail movement with a certain rate that returns a substantial profit over variable cost and you have other transportation means moving between those two points at presumably lower rates and yet they are not

able to attract the business, then you say that the shipper would not be in a position to establish that effective rate, and if he wanted to move by railway he would have to live by what the rate was?

Mr. FRAWLEY: That is right, except that he can go to this section and say "I want my contribution examined".

The ACTING CHAIRMAN: Or go under section 16?

Mr. FRAWLEY: Yes, or go under section 16. Perhaps I should not agree too quickly. Section 16 prohibits discrimination and undue preference. At the moment, Mr. Chairman, I am wondering whether or not the mere fact of making an excessive contribution to overhead constitutes discrimination. So if you will permit me, I will politely disagree that he could go under section 16.

I will now return to my critical examination of section 336, and read from page 92 of the MacPherson Report under the heading "Measures of Significant Monopoly," to which I have already referred:

It is this lack of freedom of entry which opens up the possibility that there are pockets of traffic throughout the country where there is still a positive degree of monopoly and where there may even be a significant degree of monopoly—significant enough that the shipper might be able to justify his demands for some measure of protection on economic grounds.

Let me read now from page 93:

With the intensification of truck, water, air and pipeline competition, we are less concerned that the railways are exploiting all shippers than with the possibility that a significant element of monopoly may still persist in a few cases.

So, even with the intensification of truck, water and other competition the report says there may still be a significant element of monopoly in some cases. Then they go on to say, on page 93:

The average degree of rail monopoly as measured by the difference between total revenues and total costs is not high; indeed it is, by the test of profits, lower than in many industries in Canada. One might argue, then, that the nation must be content with a rough economic justice. We have recognized that there is an increasing amount of competition in the transportation business. It may very well be asked, therefore, if monopoly regulation is not merely a relic of the past which could be safely dispensed with today. This commission believes that the average degree of monopoly which the railways have today is not itself significant and would not itself justify elaborate and expensive rate regulating machinery.

Then follows the quotation to which I wish to draw your attention:

Nevertheless we found evidence that for some rail movements the rates were many times higher than costs, indicating that a significant degree of monopoly still exists in at least a few commodity areas. Some evidence of the substantial variations in the degree of monopoly is provided by the very uneven incidence of freight rate increases in the post-war period. Railways have found it possible to implement much larger percentage rate increases on some movements than on others. It was conceded in evidence before us by witnesses for the Canadian National Railways that there remain commodity movements for which the railway has a significant degree of monopoly. There is every reason to believe that similar situations exist with the Canadian Pacific Railway Company.

We come back to this passage:

We found evidence that for some rail movements the rates were many times higher than costs, indicating—

That word "indicating" can be very readily translated as meaning "which means that"—

—that a significant degree of monopoly still exists in at least a few commodity areas.

Then, at page 99:

It is our conclusion that maximum rate control can come closest to attaining these objectives and gaining these attributes if it is based on the variable cost of the particular commodity movement plus an addition above variable costs such as will be an equitable share of railway fixed costs.

Every rate must pay the variable costs. It is that segment, that part of the rate above variable that received, and deservedly received, the attention of the MacPherson Commission, and is receiving such attention as I am able to give it now.

I have one more quotation, an important one, from page 101. It is given at the bottom of page 9 of my statement. It is:

The function of maximum rate control—

That is, section 336—

—is to place limits upon the share of these fixed costs the captive shipper must carry. The weight of the burden of inallocatable overheads determines the justice and reasonableness of the rate.

So my submission to the committee is that there is an absence of an effective alternative service if the railway can charge rates which are in the words of the Report "many times higher than cost". It follows therefore that any shipper who suspects that his rate makes an excessive contribution over variable costs, true not fictitious variable costs is entitled under this section 336 to invoke the new procedure, have the costs of his movement determined and a maximum rate fixed by the commission.

So, we have nothing wrong with the first part of this section. We have nothing wrong with these opening words that defined the candidate for the fixing of a rate, defined the kind of shipper who is entitled to invoke this procedure. That is all right and, I say again, thanks to the fact that Mr. Pickersgill put in the word "effective," which was not there when the bill was brought down last year.

Then, as the report says at page 105:

Having received the maximum rate determination, the shipper then decides whether to declare himself captive.

Up to this point, I have no objection to the section.

The ACTING CHAIRMAN: You have no objection to the formula by which the maximum rate is fixed by taking the variable cost and adding 150 per cent?

Mr. FRAWLEY: That is exactly what I have the strongest possible exception to. I am saying, in so far as the section defines the man who can apply—that is all—apply. But, as I say in the middle of page 10, it is acceptable to that point. The words in my statement are: "would seem to provide a quite acceptable procedure. And so it does to this point."

But the very next phrase in my statement—and I cannot over-emphasize it—is: "Unfortunately the acceptability ends right there." Because, as soon as his candidate begins to invoke the procedure, he is invoking a situation which has been made completely farcical by the two factors introduced, the 30,000 lb. bar, and then the 150 per cent, which has been pulled out of the air.

I would like to say something more. I noticed yesterday that Senator Phillips was asking Mr. Cope some questions, and Mr. Cope, who is a very



knowledgeable person and—well, he is very knowledgeable. Perhaps one cannot say more than that: he is honest and he is knowledgeable, he is everything that is good. I would like to finish it up and elaborate a little bit, for the benefit of Senator Phillips and all other senators, on this matter of the 150 per cent. But I have not got to that. I want to say, Mr. Chairman, that my acceptance of section 336 ends there—my acceptance of the section ends there.

As I say, at page 10 of my statement:

What follows by way of rules for arriving at the variable cost of this shipper's haul are so unreal as to rule out any possibility of the shipper invoking the rate determination procedure provided by section 336.

How does this come about? By the tragically simple expedient of making the costing a farce by requiring that the Commission must cost all shipments as if they were carried in 30,000 lb. cars—

even though it may be potash out of Saskatchewan, being moved in 140,000 lb. carloads. The commission must cost it as if that big car was a little one.

I must admit, of course, because it follows, that for the 30,000 lb. carload shipper the formula is true and valid.

Whenever it is not true and valid, it is unacceptable to Alberta and to all of the provinces of Canada except Ontario and Quebec.

In his case, the case of the man who ships, day in and day out, in 30,000 lb. cars, the 30,000 lb. carload formula is valid. I do not accept the 150 per cent added to that. It has no invalidity apart from that. From the point of view of the 30,000 lb. shipper, using the 30,000 lb. car, it is obvious that there is nothing wrong. But, as I say rhetorically on page 11 of my statement: "Will anyone say that this bill was placed before Parliament to provide a maximum rate procedure for the 30,000 lb. carload shipper and for him alone?" And then I say "Obviously not."

Why then was this fictitious cost procedure recommended by the royal commission and adopted in section 336? For one reason only, to prevent the slightest impairment of railway revenues even in the short run.

The commission says to the shippers of Canada: "We will examine those rates which are suspected of contributing excessively to "burden" that is to say contributing excessively over and above variable or out of pocket costs; we will examine rates which are suspected of being many times higher than cost, but we will adopt an unreal, a fictitious, in plain language a false yardstick in our examination, namely, we will arrive at the cost of moving your 140,000 lb. carloads of steel sheets from Hamilton or Sault Ste. Marie or Sydney but we will first make the false assumption that your 140,000 lb. carloads are 30,000 lb. carloads and then work out the cost per hundredweight and base all our further calculations upon that wholly fictitious cost."

Of course, that procedure makes the entire rate determination quite meaningless and turns the proffered help of section 336 into an empty gesture. In every case of a heavy loading shipper he would have a rate fixed for him several times the rate he is already paying.

Now, when it comes to that, I cannot put it any better than the Canadian Manufacturers' Association put it to the Commons committee. The Canadian Manufacturers' Association took the example of iron ore and, using what it called "accepted railways costing procedures," demonstrated that the use of the fictitious 30,000 lb. carload for variable costs plus 150 per cent contribution to burden resulted in these ridiculous situations: A shipper whose rate was \$2.66 per net ton would be offered the "protection"—and, understandably, I put that in quotation marks—of a maximum rate of \$14.64; a shipper paying \$3.70 would be protected under section 336 with a rate of \$23.49.

I do not think you have to do any more, Mr. Chairman, than just that to indicate that this section is unreal. If it were unreal only in the abstract, it would



not matter, but in addition to its being unreal it is unfair because it does not do what the MacPherson Commission said should be done, namely, find a remedy for that shipper who lives in an area of significant monopoly. And you have to look at the expression "significant monopoly," because it is not a monopoly if you have a highway running down one side and have water running down the other side.

But if the Canadian Pacific Railway Company—and I must be pardoned for always referring to that company, but for many years I was accustomed to doing so because it was the only company whose costs were put before the board for determination of financial need. I was asked by Senator Kinley about that. We know that the Canadian National Railways had to live with whatever increases were awarded it on a basis of the determination of the Canadian Pacific Railway's needs. That was accepted; it was just a fact of life during that decade.

Senator THORVALDSON: Mr. Chairman, at this point may I ask Mr. Frawley a question in regard to the two points on top of page 12? Were these rates, in one case \$2.68 per net ton and in the other case \$3.70, actual, factual rates taken from the rate structure or were they fictitious?

Mr. FRAWLEY: What the C.M.A. analyst did, Senator Thorvaldson, was to take the \$2.68 per net ton on iron ore moving from point A to point B. It might have been iron ore concentrates moving from Thompson, Manitoba, to Fort Saskatchewan, but it was an actual rate. He said he used accepted railway costing procedures. There is no doubt that it was an actual rate, therefore. That is what he did, then, you see, because the load was moving at \$2.68 per net ton on a car which probably loaded even more than 140,000 lbs. I keep saying 140,000 lbs., but some cars now are bigger than that. All members of the committee know that the trend is towards bigger cars, but, in any event, that \$2.68 was actual.

The C.M.A. analyst took that movement and translated it into a fictitious movement of 30,000 lbs. and then got the cost associated with 30,000 lbs. Then he added 150 per cent to that. Then that produced a rate of \$14.64. I think that answers the question you put to me, Senator Thorvaldson.

Senator ISNOR: What is the average weight per carload, sir? You quoted 30,000 lbs. and you quoted 140,000 lbs. What would be the average?

Mr. FRAWLEY: The average? With great respect, Senator Isnor, I am not sufficiently familiar with railway movements to say, but an average, respectfully, is not as important as the actual movement itself.

Senator KINLEY: They will not give you the carload rate unless you have 10,000 lbs. to the car. Do you object to the average man in Canada having a rate on a 30,000 lb. carload?

Mr. FRAWLEY: What I object to, senator, is that if I am moving steel sheets or plates, or if I am receiving them—and shipper and receiver are synonymous terms—if I am receiving them in Edmonton and they are coming in day in and day out at 140,000 lbs., 160,000 lbs., 180,000 lbs., then I do not want them costed as if they were moving in 30,000 lb. cars.

The ACTING CHAIRMAN: On that point, Mr. Frawley, it is not an absolute rule you are stating that you must arrive at this fixed rate, whether the weight is 10,000 lbs. or 140,000 lbs. Is there not some provision in this section of the bill for making some adjustment in your variable costs or otherwise where the weight would be in excess of 50,000 lbs. or more?

Mr. FRAWLEY: Minimal, yes, Mr. Chairman. And it is minimal in the opinion of all of the people who presented briefs to the commission and went into that question. One of them was the Maritime Transportation Commission, representing the four Atlantic provinces. Another one was the very excellent Government of Manitoba brief. You will find that they dealt with the subsection because the

subsection is there. There is a subsection which has an ameliorating effect. But I accept all the amelioration this subsection gives me, and it still leaves the fiction. It is still substantially fictitious, even though you bring in what I call the minimal amelioration, which one of these subsections provides for. I think it is subsection 5(b) (ii).

The ACTING CHAIRMAN: On page 48, yes.

Mr. FRAWLEY: I am obliged to you for calling that to my attention. That certainly must be taken into account.

The ACTING CHAIRMAN: There is an alternative to what you have suggested. Perhaps by making this calculation you might establish that the existing rate after all, by comparison, is reasonable.

Mr. FRAWLEY: Oh, yes, but then I am entitled to have my rate costed, if I am entitled to anything. If you assume that I am a candidate, and you must assume so, then, as I say later on in the brief, what we are asking for is costing on 140,000-pound carloads. I cannot ask for more relief than this. I am moving steel sheets from Hamilton to Edmonton. I can move them in 160,000-pound carloads, but I am not reaching for the biggest possible cars, so let us say I ship them in 140,000-pound carloads. I am not asking for averages. I am talking about what moves my steel sheets from Hamilton to Edmonton. I find it moves in 140,000-pound carloads and has for years.

Now, I say if I am a candidate to have that rate examined I want to know what is the cost of moving that 140,000-pound carload to Edmonton, and, honourable senators, why the resistance? Only because of the fear of impairment of railway revenue, and I will indicate from a part of the report that the commission itself said just that. And I will just be a few minutes getting to that section in the report itself. There is no doubt about that.

Senator THORVALDSON: I would like to ask Mr. Frawley a question following from what I asked him a little while ago, referring to a rate increase from \$2.68 to \$14.64. Is that a fictitious rate or could that not be an actual, practical case? In other words, is it possible now—and it seems absurd—to move a rate from \$2.68 to \$14.64? Is that a factual matter or is it fictitious?

Mr. FRAWLEY: It is a fictitious rate which emerges from applying the formula to that particular movement that the C.M.A. analyst costed.

Senator THORVALDSON: Is that likely to be applied factually?

Mr. FRAWLEY: No, no, because then the man would say that he would just not discuss this any further. So we come to nothing. It is an empty gesture. That is my complaint. In fact, I said to the Commons committee that they should take it out. I said, "If you do not want to amend it, remove it."

Senator THORVALDSON: May I ask if the potash industry in Saskatchewan, which is obviously a captive shipper—

Mr. FRAWLEY: I am using the word captive in a little different sense, but you are right: it is captive in every way.

Senator THORVALDSON: There is competition as between the two railways, but certainly it is a commodity that must travel by railway.

Mr. FRAWLEY: Yes.

Senator THORVALDSON: How are those shippers going to be affected by this Act? Are they going to be adversely affected, or have they got a guaranteed negotiated rate now, or are they likely to apply under this Act as competitive shippers?

Mr. FRAWLEY: The act in this form?

Senator THORVALDSON: Yes?

Mr. FRAWLEY: Never in this form; never in the world, because they would only get from this statute a rate worked out on the fictitious basis that they



were not moving 140,000-pound cars, but 30,000-pound cars. You know the cost goes right up. The commission would say to the potash shipper—"we have worked out your cost with 30,000-pound cars, and we have added 150 per cent and your rate is X dollars"—maybe four or five times what he is paying. But working it out on the basis of 30,000-pound cars plus 150 per cent is completely fictitious when he is using 140,000-pound cars.

The ACTING CHAIRMAN: But that surely does not fully exhaust the ameliorating provision on page 48, because if in fact he is moving 140,000-pound cars and the commission makes a calculation on the basis of 30,000-pound cars, then you have to consider this additional factor of the difference between 30,000 pounds and 140,000 pounds, and they have to make certain reductions, up to certain limitations, in the variable rates they are using to establish the fixed rates in order to reflect that. Surely the only argument is that if there is something, it just is not enough.

Mr. FRAWLEY: I said a moment ago that I fully agree with the fact that there is an ameliorating section. It was not in the original bill, and without being too personal about it but merely to try to explain a little about this, perhaps you will permit me to tell you a very short story. When the first bill was introduced in Parliament, the Minister of Transport was the Hon. George McIlraith, and he called in the provinces. Mr. Cope's predecessor, Mr. Scott, was also there, and Mr. Manning, and I put it to them that there must be some effect given to the higher loading carloads, and from that point there was an ameliorating clause put in. But originally there was no ameliorating clause, and I give credit where credit is due. But I say that that is not the same as if I was costed out at 140,000 pounds. If I was actually costed out at 30,000 pounds with some amelioration it is not the same as being costed at 140,000 pounds. Take the potash shipper, for example. If he could go to the board and say, "I want my movements costed at 140,000, or 160,000 or 190,000 pounds"—assuming we were getting into such large cars—"I want it costed out at the actual carload rate; I don't want it plussed by this figure that will come out of the air to augment the railroad revenues; I want it costed on a more realistic figure" then, maybe the shipper would have a rate properly costed and properly plussed that will be better than the rate he is getting. I want him to be able to invoke something sensible. Whether he gets some good from that or not is something we have to live with, but we should not have to live with this sort of a fictitious formula. I have not pursued this aspect of it to the point where I have done all the arithmetic necessary, but I protest against the fictitious nature of the limitations because we feel they violate the terms of the MacPherson Report where it said that we should get some relief.

The ACTING CHAIRMAN: This does provide a measure of relief in those cases. Your complaint is that it does not go far enough, and that the basis of calculation is not a real basis.

Mr. FRAWLEY: That is right, but it does not lose the character of being completely fictitious. I do not want to be facetious, but perhaps it is a little less fictitious depending upon the degree of amelioration. I will not give it any benediction—I submit it is wholly insufficient and it does not remove the evil of costing on the basis of a 30,000-pound carload.

Senator THORVALDSON: Is this a formula recommended by the MacPherson Commission?

Mr. FRAWLEY: Yes, it is; I have to admit that. There is no doubt about that.

Senator KINLEY: To me it seems to be so arbitrary. Why the 150 per cent? It cares the average person.

The ACTING CHAIRMAN: It was the recommendation of the commission, and on the basis for it you have to go back and read the entire commission report.

Senator KINLEY: It might possibly apply in a unique situation where you have to go into the Arctic, for example.

The ACTING CHAIRMAN: Once you agree there is such a thing as overhead there you have to assess some portion of the indirect cost necessary to operate. In many areas it is more than this.

Mr. FRAWLEY: In the case of drugs it is more than that.

The ACTING CHAIRMAN: I was not thinking only of drugs.

Senator KINLEY: Once in a while you buy stuff in farm country, and your broker makes the entry that you are in a hurry and you get the invoice for what you have bought and you will find there 100 per cent.

The ACTING CHAIRMAN: The only comment I want to make at this stage is that the illustration you chose, Mr. Frawley, in reference to steel sheets and potash may not be a very apt illustration.

Mr. FRAWLEY: That may be; there may be other illustrations that would serve my purpose better.

The ACTING CHAIRMAN: These illustrations may not serve your purpose at all.

Mr. FRAWLEY: I am just endeavouring to make one point and that is that much of the commerce of Canada goes in carloads higher than 30,000 pounds.

Senator KINLEY: The average man does not have the capital to buy such large quantities. He cannot buy that much steel at the one time. Such an amount of steel would be a very large investment.

Mr. FRAWLEY: You have to excuse me, perhaps, but I am talking for the Province of Alberta, and out there we move around in a big way and we use big cars. It is the best part of Canada, and a 30,000-pound car is regarded as a small car in Alberta and there are many 140,000-pound cars moving in and out. It could be that these steel sheets from Hamilton is not the best example I could take, but I am not really looking for examples. I am discussing what is a completely wrong and self demonstrated evil in this section. As far as I am concerned the fact of the MacPherson Report saying 30,000 pounds plus 150 per cent—and I am going to read part of the report later—that is not the complete answer. If it were, I would not be here at all; we would not have been before the Commons committee. I would say "the MacPherson Commission said that, and that is all there is to it."

But that is not the attitude of the people I am speaking for, and it is not the attitude of the provincial governments who sent people to appear before the Commons committee. Such an attitude would be inconsistent with the principle laid down and which I have quoted in my statement. What they ultimately recommended there was a compromise and is a departure from what would naturally follow from what they said in the quotations I have given. I cannot say any more than that about the MacPherson report.

Senator KINLEY: You get \$3 a ton on your coal, by the ton, no matter how much they have in the car?

Mr. FRAWLEY: Do you mean the rate?

Senator KINLEY: You get a subsidy of \$3 a ton for the coal you have to move to the coast.

Mr. FRAWLEY: Oh, yes, there is no doubt about it; there is a subsidy at the moment, but I am told it is on the way out.

Senator KINLEY: But you do not want to pay steel by the ton but want to pay by the carload.

Mr. FRAWLEY: There is a subsidy on coal, and there is no subsidy on steel sheets.



Senator KINLEY: Is not that the reason this commission is appointed, to deal with all those matters?

The ACTING CHAIRMAN: That is right.

Senator KINLEY: We have appointed the commission to deal with it, and we are dealing with it here.

The ACTING CHAIRMAN: Yes, senator, but Mr. Frawley and the people he represents have the right to come here and express a dissenting view and tell us the reasons for expressing that dissenting view, whether or not we accept it.

Mr. FRAWLEY: Speaking on behalf of the Premier of Alberta, I want to say I appreciate your hearing me. It is all very well to say we have a right to be heard before Parliament, but we are glad to be invited. It is all very well to say, "You have had your day in the Commons," but under the Constitution of Canada this bill is just a lot of paper until the Senate of Canada approves it.

Senator BROOKS: While you are speaking for Alberta, your arguments apply, I think, to the Atlantic provinces just as much, if not more than, to Alberta.

Mr. FRAWLEY: I have always thought that the Atlantic provinces and Alberta have been just as close as my fingers are now. We are long-haul provinces, we are the outlanders, and freight rates are a terrific problem to us and to the Atlantic provinces.

Senator THORVALDSON: When you speak for Alberta you also speak for Manitoba and British Columbia.

Mr. FRAWLEY: I would like to think I am speaking today—or, at least, I am sure I am not saying anything that would not be paid if Manitoba and Saskatchewan were here, and British Columbia, for that matter, because they presented a very strong case to the Commons committee against section 336. I have to be forgiven for saying Alberta; certainly, the Prairie provinces are one in opposing section 336.

Senator LEONARD: I hope you will not mind there being a senator from Ontario here!

Senator BROOKS: They have been pretty quiet at most of these meetings.

Mr. FRAWLEY: We must keep in mind that Ontario has a great many more senators than Alberta; Alberta has only six senators. I have always thought there was something wrong about that, but that is in the Constitution.

The ACTING CHAIRMAN: That is not something we are going to deal with this morning!

Mr. FRAWLEY: No. I come to the remaining factor in this formula, and that is the 150 per cent.

Under the rules prescribed by section 336—and this is page 12 of my statement—after the carload costs have been determined in the manner I have outlined, the commission then must add 150 per cent to those variable costs, and the resulting figure will be the rate, the maximum rate which the railway must not exceed.

The MacPherson report declared that the addition above variable cost must be such as will be an equitable share of railway fixed costs. Of course, 150 per cent or 200 per cent or 10 per cent added to a fictitious variable cannot cure the evil. The total will be just as fictitious as the base.

How can the 150 per cent possibly be an equitable contribution to rail fixed costs when you cost a 140,000 pound carload at 30,000 pounds? All that that arithmetic does is to assure—and I emphasize this, that seems to be its purpose—is to assure that the cost of the shipment will not only be fictitious but it will be ridiculously high.

That seems to be precisely what was intended, so as to assure that there would be no impairment of rail revenue, even though it left the shipper con-

tributing excessively above cost. That is what the section does; it just assures that. It seems axiomatic that the 150 per cent must have meaning.

Even assuming that there were substituted—

The ACTING CHAIRMAN: I speak only because I do not want to be taken as accepting your statement that that is what the section does in absolute form. You are not reflecting at all the amelioration that is provided where the carload is in excess of 50,000 pounds, and how the variable costs are reduced in the formula.

Mr. FRAWLEY: You are quite right, Mr. Chairman. You are perfectly right in calling to my attention repeatedly that there is an amelioration factor. There is no doubt about that, and perhaps I should have—and it may be that the Senate committee has facilities for doing that, that someone should take the amelioration clause which you find on page 48 and find out how close it will bring a 30,000 car up to 140,000. I know there is amelioration there, and I know the 150 per cent is not added on until that factor has been applied. It is just a matter of arithmetic. It will not turn a 30,000 car into a 140,000 car. Perhaps I cannot make my statement any better than that.

The ACTING CHAIRMAN: If you want that magic, you will have to find it somewhere else.

Mr. FRAWLEY: Yes, but it will turn a 30,000 car into something else. That amelioration is just that, amelioration, and it does not turn the section from what it is into the kind of section I want it to be. I want it to be actual and factual, true not fictitious.

The ACTING CHAIRMAN: Do you agree, whether you take a load of 30,000 pounds or 140,000 pounds, among your costs there are some items that would remain constant, regardless of the weight?

Mr. FRAWLEY: Yes, I rather think there are some.

Senator KINLEY: It is harder to haul a heavier car than a lighter car.

Mr. FRAWLEY: With great respect, it does not take away, in my respectful submission, from the validity of my protest and my criticism, that whatever those costs are, they are going to be "X" dollars if you are paying it on 30,000, and they are going to be "Y" dollars if you are paying it on 140,000 pounds.

The ACTING CHAIRMAN: It might be "X-plus" because there may be costs in the 140,000 that are in excess of those which relate to the 30,000.

Mr. FRAWLEY: If you have ever looked at a freight tariff—and I am sure that you have—you find that after the tariff quotes the rate, then there is a little column that is appended to the rate and it indicates: at 30,000 pounds, "X" cents; then at 50,000 pounds the rate is down; and as the 30,000 goes up to 140,000 the \$2 or \$5 goes down. It is there, and you accept it being there, which means only one thing, that it costs less to move that 140,000 pounds in one carload than to move four times the 30,000 cars.

Perhaps I should not depart from this, but it will only take a moment. One thing would be this shipper could do this perfectly ridiculous thing. Say he is a 120,000-pound shipper. I suppose he could line up four cars and start loading them in 30,000 cars. Would that be permitted for a moment? I think you would have the Board of Transport Commissioners talking about wasteful use of cars if you did this to meet the requirements of this fictitious and unjust section.

The ACTING CHAIRMAN: I think we have run over that one.

Mr. FRAWLEY: Yes, that is right. I have one remaining factor, sir, and that is the 150 per cent. My proposition in connection with the—

Senator ASELTINE: What do you recommend?

Mr. FRAWLEY: I have a specific recommendation. I am happy to say the senators have been very patient in hearing me, and I actually conclude my remarks with a proposed amendment.



Even assuming that there were substituted true, valid costs at actual carload weights—140,000-pound cars, if that was the fact—then there still must be some assessment and some examination of the 150 per cent figure before it is enacted and forced willy-nilly upon the commission, with no alternative to use in arriving at its rate determinations.

I put it to the committee that there must be a definite relationship between what is permitted over variable costs and the nature of the profit which the Commission deems desirable and acceptable that the railways should earn net after provision for all costs, variable and fixed.

If the bill does not contemplate that the commission should concern itself with the concept I have enunciated, that there must be a relationship between the addition over variable costs and what the railways should earn. If the commission is indifferent as to that, and if the bill makes the commission indifferent as to that, then it necessarily follows that the commission is quite indifferent as to whether the Canadian Pacific earns net 2 per cent or net 20 per cent from its rail operations.

No meaning whatever, then, is given to the words "equitable share of fixed costs" which the MacPherson Royal Commission declared was the purpose of the addition to variable costs. Indeed, the report makes it quite clear that the relief from excessive contribution over variable costs was the objective of rate control. If that is so, and if the 150 per cent is not to be looked at in the light of what is a fair rate of return, then the so called new freedom in rate making is indeed freedom, and the long haul shippers must resign themselves to large rate increases indeed.

I add this for a bit of emphasis; if that is the situation, and if there is this indifference on the part of the Commission to the 150 per cent, then I have nothing but profound regret for the part that Alberta played along with all the other provinces except Ontario and Quebec in the requesting and setting up of this Royal Commission investigation.

In the committee of the House of Commons the railways answered our criticism on section 336 by frankly agreeing that it would hardly ever be used if at all, but that that was not important because the shippers do not need legislative protection. They enjoyed greater protection now.

That posture is a complete avoidance of the issue we raised—the issue of significant monopoly, the issue of rates which contribute excessively and disproportionately over variable costs. We want suspect rates costed at actual weights then plussed by a percentage which will be an equitable share of fixed costs. The commission will never know whether 150 per cent will be too much or too little.

If that was done—if the cars were costed actually as they moved, and they were plussed by some intelligently applied percentage to provide for overhead—then maximum rate control would afford some relief, and it would bring about reductions in those rates which, in the words of the MacPherson Report, are many times higher than cost.

Rate reductions, I suggest, are furthest from the thoughts of the people who drafted this bill. No, impairment of rail revenue is the objective, even though the impairment would result from reducing the excessive contributions to overhead which the MacPherson Report said was the purpose of maximum rate determination.

Now, I said I wanted to say something about section 16, and after I do so my remarks are concluded. In the committee of the House of Commons the Minister of Transport took the position that the new section 16—and not section 336, as I have contended and as counsel for the other provinces contended—was the heart of the bill. With great respect I disagree with the Minister.

Section 16 is the new anti-discrimination section, but it is not related in any way to those provisions designed to cure the inequities which the Terms of Reference directed the royal commission to remove—inequities directly related

to the unequal contributions over variable cost which freight rates were bearing, inequities which flowed directly from the decade of horizontal percentage increases in freight rates. Section 336 was the section designed to remove those inequities and distortions in the rate structure. I have endeavoured to show you how badly section 336 has failed to provide the machinery to bring about rate reductions by eliminating excessive contributions to overhead.

I will say just a word about section 16 because the Minister of Transport relied so heavily upon it. A shipper who has reason to believe that a freight rate may prejudicially affect the public interest—not the individual interest of the complaining shipper, but the public interest—may complain to the commission. It was difficult under the old law to convince the board to find discrimination, and to order its removal. It will be quite impossible under section 16. How will a small, not wealthy, shipper prove public interest. Then obviously follows this question: Is it interest in the national sense, the provincial sense, the municipal sense, or the regional sense? None of those questions are answered.

The ACTING CHAIRMAN: Except that "public interest" is said to be in respect of tolls for or conditions of the carriage of traffic within, into or from Canada.

Mr. FRAWLEY: I put it, Mr. Chairman, in this way, that if a small—I say "small" but I mean somebody who has not the wealth of Canada Packers—if a small vegetable processor in southern Alberta felt that his rate was prejudicial and that it amounted to discrimination, he used to be able to go to the Board. I am not saying anything about how difficult it was to get that established, but in any event he was able to go to the Board and say: "This rate prejudicially affects the business of John Brown and Company of Lethbridge, Alberta"—or, it might be John Brown and Company of Medicine Hat, Alberta. The Board of Transport Commissioners then listened to him and said whether or not that business was prejudicially affected. I submit that now he cannot do that. He has to show that the public interest is prejudicially affected.

The Minister of Transport in the committee of the House of Commons put to me something to the effect that the Province of Alberta could probably contend that that was against public interest. With great respect, I do not know how the Province of Alberta would handle a matter of that kind if this particular vegetable processor went to it and asked it to provide counsel and cost analysts, and so on. He would still have to talk about the effect that the so-called allegedly discriminatory rate had on his business. It is not public interest. I do not think the fact that a vegetable grower in southern Alberta is having a difficult time is going to terribly upset the economy of Alberta. I am wondering what this man would have to show in respect of the public interest. A municipality is a public body; a province is a public body; Canada itself, the nation, is a public body.

In any event, gentlemen, I can say no more than I said in introducing this concept. My complaint in introducing this concept is that it is just one more aspect of this bill which is unacceptable. It seems to me to be designed to make it difficult—almost impossible—to prove a case of discrimination because there is this spectre of public interest rising up in front of any small shipper.

Maybe if the rates in Canada for moving domestic grain—not the Crowsnest Pass grain, because that is in a place by itself—were to be challenged there would be some public interest involved in that, but I respectfully put to the committee that there would be many, many thousands of instances where a small shipper would find it just impossible to prove discrimination and undue advantage. You can not do anything at all with it under section 16.

In concluding my representation I have two proposals to make to the committee. One is that the Senate should amend section 336 so as to substitute—this proposal can be found on page 15—to substitute actual variable costs for the fictitious variable costs which the commission must use in determining the fixed maximum rate. Perhaps I should say it should substitute actual varia-



ble costs for the fictitious variable costs even as they are ameliorated by section 336 which the commission must use in fixing the maximum rate.

The ACTING CHAIRMAN: Can you stop there for just one second?

Mr. FRAWLEY: Yes.

The ACTING CHAIRMAN: There is a definition of "variable costs". You keep talking about fictitious variable cost, but there is a definition of "variable cost" on page 47, in subsection (3) which reads:

In determining the variable cost of the carriage of goods for the purposes of this section, the commission shall...

And then follows the enumeration of the things it must take into consideration.

Mr. FRAWLEY: That is right, Mr. Chairman; but you certainly can never get around the fact that there is a direction that when you are costing the costs of a candidate for the fixing of a maximum rate you must cost him as moving 30,000 carloads.

The ACTING CHAIRMAN: Then you are only stating half the proposition, because part of the direction is given under (c) of subsection (3):

calculate the cost of carriage of the goods concerned on the basis of carloads of thirty thousand pounds in the standard railway equipment for such goods;

But later in the ameliorating section it says if that rate is in excess of 50,000 or more, then you reduce your variable cost by as much as 50 per cent.

Mr. FRAWLEY: It could be, Mr. Chairman; but so far as I am concerned the case I am presenting is that if I am moving in 120,000-pound cars or even 190,000-pound cars, which are now moving on the railways in Canada, I do not want to be costed at 30,000 pounds plus 50 per cent even. That is going the whole distance. As I say, I regret I did not have an actual piece of arithmetic worked out for you, but I simply say that if you fail to cost me actual, then it is fictitious. It is either true or false. This may not be quite as false as if you did not have the amelioration section, but it is still false. I cannot say any more than that.

Senator LEONARD: Is it practical to do as you suggest? Can you have all size shipments included? Does there not have to be some variation from that standard? If you take a 120,000-pound movement you have to have variations from that.

Mr. FRAWLEY: Senator Leonard, I would simply say, let us take the potash industry. I do not know what they move in by carload. Or let us take sulphur, or steel sheets or plates, or any heavy industry. You surely would agree that you would not term that kind of carload, which is a whole industry—sulphur does not move at all except in very large cars because of the value of the commodity, and everything else. When you say you have to have some standard, surely you would say, "Well, they move in 140,000-pound cars and therefore it is a 140,000-car industry."? We have to standardize this thing, but do not standardize it at 30,000 pounds, the size of a truck. Fancy using the analogy of a truck when you are moving iron ore concentrates.

Senator LEONARD: But when you are using examples like that, are they not hypothetical?

Mr. FRAWLEY: All that I can say is that you must not deny me the opportunity of having that movement costed. If that movement were costed and came out at better than the negotiated rate in existence, that is not saying any more than that.

Senator LEONARD: But you have that opportunity otherwise, do you not?

Mr. FRAWLEY: I have no opportunity to ask for the maximum rate on a cost-plus basis.

Senator LEONARD: No.

MR. FRAWLEY: And I suggest that this freight rate structure should be more and more cost-oriented. There was an indication in the MacPherson Report that it should be more cost-oriented. And why should it not be cost oriented? What is there different about the transport industry from any other industry? As long as the plus is fair there is nothing wrong with costing a freight rate, because you must have your variable cost. You have certain traffic contributing excessively, that is all. I do not know what the contribution of the potash industry is now, but if it is more than it should be according to a fair formula then it should be reduced.

I suggest, therefore, that there should be two amendments, namely: that actual variable costs should be substituted for the fictitious variable costs which the commission must use in determining the fixed maximum rate. Secondly: substitute for the 150 per cent contribution to be added to variable costs such percentage as would reflect an acceptable level of railways earnings.

The ACTING CHAIRMAN: Let us take a moment to talk about substituting for the 150 per cent, which is at least a fixed amount, such percentage as would reflect an acceptable level of railway earnings. Who is going to say that?

MR. FRAWLEY: For ten years the Board of Transport Commissioners did exactly that; they examined the financial need of the Canadian Pacific Railway, and having arrived at their operating costs, then they had to add something; they added something for surplus and for contribution to fixed costs. They did exactly what I am saying. The Province of Manitoba made a more comprehensive criticism than I did, and the only answer was, "We are getting away from what was done in the freight rate cases."

There is nothing startling when I say 150 per cent. There must be some percentage—10 per cent or 300 per cent, any percentage.

Perhaps I should have a little more to say about maximum rate control. The whole concept of maximum rate control was placed before the MacPherson Royal Commission—and by whom? By the Province of Alberta, through Dr. Merrill Roberts of the University of Pittsburgh. He came here and put the proposition of maximum rate control before the commission. He studiously avoided naming any percentage. There should be a percentage that should go up and down, based on an intelligent assessment of what the profit should be. If you just blindly apply the 150 per cent, then you do not care whether the CPR is going to earn two per cent or 20 per cent.

I would also request an amendment to section 16 which would remove the requirement that a shipper complaining of unjust rate discrimination must prove that the rate concerning which he complains prejudicially affects the public interest. The amendment I request would restore the ancient rule which came to us from the common law that a common carrier must charge tolls and afford facilities without favouring or unduly preferring one user against another and without discrimination.

The ACTING CHAIRMAN: I think "prove" is an unfortunate word. The statute says that the person must make out a *prima facie* case, that is, just produce certain facts.

MR. FRAWLEY: Of course, Mr. Chairman, we are all familiar with what a *prima facie* case means in the practice of law and in the presentation of cases. Some judges are very difficult to convince that there is a *prima facie* case, and others are convinced very easily. Do not put too much store in that.

The ACTING CHAIRMAN: When you say some judges are very difficult to convince, if you put a period there I would agree with that.

MR. FRAWLEY: Mr. Chairman, and members of the Senate committee, I am very thankful and appreciative of the time you have given me to discuss this matter. Perhaps I took too much time. However, for myself and for the Premier of Alberta I wish to express thanks for the invitation to come here and to state our case and our continued opposition to sections 336 and 16 of this bill.



The ACTING CHAIRMAN: There are a few points Mr. Frawley made in the course of his presentation which may be considered. I think Mr. Baldwin would like to give some information to the committee with respect to them.

Mr. J. R. Baldwin, Deputy Minister of Transport: Thank you, Mr. Chairman. I think it might be helpful if I did comment on several points raised by Mr. Frawley within the broad context of the work that went into the preparation of the legislation. I must confess at once that this is a very complicated and intricate problem, with respect to the explanation of a maximum rate formula and its relationship to the process of rate making and in general the railway movement and competition. We found, when we were in the very active discussion stage, in the preparation of the legislation—and I refer now to the period before it reached parliamentary consideration—I am now trying to set a sort of framework for the later comments—we found it was not easy to reconcile the interests of the various groups that we talked to. With the full consent and encouragement of the minister, we at the staff level had very extensive and frank discussions with the representatives of all possible interests—provincial, municipal, railways, and other modes of transport—about the thinking that was going into the bill, and were very frank and forthcoming about what we were proposing to put into the bill. As a result of those discussions, even the first draft of the bill, quite apart from the subsequent amendments made in the Standing Committee and the Committee of the Whole, in the House of Commons, reflected many helpful and useful suggestions which we received from a wide variety of sources, including Mr. Frawley, who made very helpful suggestions on many of the points.

We discussed all of these very frankly, but we did find that there were basically two points of view that we felt we did have to keep in mind, if this was to be successful legislation, and reconcile them with the representations made to us on one side or the other.

Quite frankly, in the developing of a maximum rate formula—and I gather the principle of the maximum rate idea is not an issue, it is a question whether the formula is a good one—as we brought forward each idea, we found, quite normally, and I suppose this is understandable, in discussion with the operators of transportation—and I include particularly the railways—that there was a tendency to feel that what they were trying to bring forward was not sufficiently favourable to them, it did not take enough account of their needs to earn the revenues required to get out of this very heavy subsidy position, and reliance on the Government. On the other side we found that the briefs that came in from other groups usually emphasized the need somehow to limit the railways' ability to earn money and try to bring the formula into a close cost relationship, so that the railways would recover their variable costs, but would receive a more modest contribution to their overhead costs.

It has not been easy, frankly, to reconcile these two objectives which we feel must be reconciled in the legislation, namely, reasonable support of the position of the railways to maintain their earning power and increase it, because it is the basic objective of the legislation, and fair treatment under all circumstances of the shipper.

As for the formula itself, I think I could say there is no disagreement, that it appears it is going to work reasonably well, certainly up to 30,000 lbs., and perhaps up to 70,000 lbs. I think I would select the latter figure, because there is quite a substantial amount of data to support that.

A submission made by Mr. Borts which I believe Mr. Frawley referred to, and which certainly was referred to yesterday, supported that assumption itself. It pointed out that generally, up to 30,000 lbs. on a trial basis it appeared to be very good; but also suggested that on what I call the higher rated traffic, the

traffic that moves at higher rates because it is a more expensive type of traffic, it would work well up to 70,000 pounds.

One of the honourable senators, earlier asked about the average carloading, I guess it was Senator Kinley. The average carload runs about 70,000 pounds which ties in very well with the performance expected of the formula. The issue raised by Mr. Frawley seems to relate to the heavier carloading bulk commodities that it might be described as low rated commodities—sulphur, potash, coal, and so on.

My comment on the working of that formula in that general area is a twofold one. First, it is that our examination had indicated that there is really very little need for a maximum rate formula to protect that type of traffic, and this is where I felt that the submission made by Mr. Frawley could be a little misleading, quite frankly.

The second point—and I will come back to both of these points—is that even where the need does exist, the formula is not going to work too badly.

Returning to the first point with respect to heavy bulk loading traffic, this, as Senator Kinley put it, is traffic which is generally associated with large companies and large shippers, who are in a strong position to negotiate a favourable rate with the railways that has no relation to the maximum rate requirements that exist now or that we think will exist in the future.

I could give many examples, but perhaps the three commodities mentioned by Mr. Frawley would be good examples.

The present maximum rate on the steel plate movement that he mentioned, to Edmonton, is running at \$3.68 per cwt; but it is actually moving at \$1.95, because the companies have been able to negotiate a good rate with the railways and the negotiating position is a strong one. The railways want that traffic and are prepared to bargain for it.

Potash has a maximum rate, a class rate, of \$2.99 per one hundred pounds but it is actually moving at 45 cents.

Sulphur was mentioned. The sulphur example I happen to have here is out of Alberta to Vancouver. The maximum rate is \$1.75 but the traffic is actually moving at 45 cents.

These are big companies that have proven their ability to negotiate with the railways. The railways want the traffic and are prepared to offer a favourable rate. They are not in a position, under this legislation, to move in and impose maximum rates. That is not the purpose of the legislation. The purpose is to provide a maximum rate, not for the railway to introduce it but for the shipper to fall back on it if there is need for it.

We have not changed the agreed charges formula, and in most cases the shippers have used the bargaining power to take advantage of it.

I might mention, in this connection, when we talk about effective competition, there is very effective power they bring to bear on the railways. It is not just the power that there may be a shipping line or a trucking line alongside which one could term as an alternative—though a trucker could not be much of an alternative when you are talking in bulk loading of 200,000 tons. It is normally what is described as open-market competition, which really means that sulphur, potash, coal, to be successful in competing in the open market, whether a western Canada commodity moving into Ontario or Montreal, or something going to overseas markets, that commodity has to be able to compete at a given price in the world market, and when the railway starts to talk with the shipper he knows very well what the world market price is and therefore he knows very well that if he imposes a full-class rate he may be entitled to impose under the rate structure as it exists now, the traffic will not move, because the total price on the world market is going to be too high. The railway wants that business and therefore they negotiate agreed charges or provide a special rate.



I can give other examples. There is the fact that the Canadian National branch lines, which have been built usually under parliamentary statute in the last few years, have in most cases been preceded by a negotiation with the industry that wanted the branch line to be built to serve them.

The result of the negotiation has usually become a negotiated rate or an agreed charge at relatively low cost level which is far below the maximum class rate that is now permissible.

I could also point out that the general level, or the averaging of these charges—although I admit at once that averaging is sometimes misleading—the average of bulk commodity charges in this general area—comes out below the average of the agreed charge which now exists—we have a substantial volume of evidence to show that, in the area of the heavier-loading commodity, which Mr. Frawley referred to extensively, this protection is not substantially needed, because all potential users have shown full ability to bargain effectively with the railways and obtain, even now, a rate that is far below the maximum rate, and we think in the area of perhaps the lighter loadings to which Senator Kinley referred, the protection is afforded quite effectively by the formula.

I will make a couple of brief comments on the formula, because even to the extent that our assumptions may be wrong, and where now there may be need for the use and protection of the maximum rate for a heavy loading commodity, we do not think the formula is going to work too badly. We admit it is not perfect but we have looked at all the other alternatives we can think of, and we do not think we have found anything more satisfactory that we could do. On a random sample basis we have examined the formula to see how it might work out under certain situations.

The results work out not too unfavourably in comparison with the maximum rates which we now have, in the class rates. In some cases they came out the same, in some cases they came out higher and in some cases lower.

Quite apart from that, in an attempt to meet some of the points that were mentioned, we did, as the chairman has indicated, nevertheless recognize that in cases where the maximum rate might be called into play for heavy loading commodities, there is some benefit in cost savings as compared with the lighter loading commodities for the railway, and we have provided a formula which requires—and that is the one to which the chairman referred—that part of that benefit be shared with the shipper.

We did something else. We put in as a further protection what I might call a two year freeze on the availability of use of the maximum freight formula in cases where rates are presently at a level controlled by the Freight Rates Reduction Act.

In other words, we have said that unless a railway actually raises a rate in that category of rates as compared with the August 66 rate, the availability of the maximum rate may not be claimed.

Now, this was not to limit the position of the shipper but to limit the position of the railways to encourage them to keep their rates down at the present level.

Having made all the reviews that I have mentioned, and having looked at the special situation of the heavier loading commodities, we came to the conclusion that maybe this formula is not absolutely perfect. But there was no alternative formula we considered administratively feasible that was any better, and most of them looked a lot worse. It does provide protection over the wide area I have mentioned, and, if there is any weakness—and we do not think there is much—it could exist in these heavier loading commodities where there is very little need for it. As I said, International Nickel can bargain with the CNR and get a good rate. They are pretty equal when they take each other one, so to speak.

The MacPherson Commission did a lot of work on this and we finally concluded that the best thing to do was to adopt the MacPherson Commission formula with the modifications I have indicated, but to provide as well that this formula will come up for review with four years, at which time, presumably, there will have been enough experience to indicate whether there are weaknesses in it. If so, they can be remedied at that time.

Finally, as an additional safety valve against any possible weakness, we have strengthened clause 16. This was done at several stages in the Committee process in order to make it a pretty broad appeal clause carrying with it a number of written-in principles which we think protect the public interest and ensure, that, if in the long run even the application of the maximum rate formula should not work fairly in the opinion of a shipper, that maximum rate too, like anything else, could be appealed under clause 16.

I have not attempted, honourable senators, to deal seriatim with the particular points of Mr. Frawley. Rather I have tried to indicate a little of the philosophy that went into the building of this bill, and I hope I have been able to indicate the thought that led to the final position we adopted.

Senator PEARSON: Why choose four years for the review?

Mr. BALDWIN: We do not think that there is going to be that much use of the clause. We may be wrong. Certainly, in the heavier loading commodities we do not think there is, because we think the evidence has indicated that in that area the shippers will be able to take care of themselves in moving their commodities at far below the present maximum rates. Also, we want to have evidence in order to build a case, and when you do examine it you will see that it is a complicated matter; so we have to have enough time to do proper research.

Senator LEONARD: Mr. Chairman, I would ask Mr. Baldwin if he has any comment on the question of interpretation of public interest that Mr. Frawley raised?

Mr. BALDWIN: Yes, sir. The point raised by Mr. Frawley with regard to public interest was very much in mind when, in the committee stage in the House of Commons, clause 16 was redrafted to include, on page 10, section 16(b) and, subsequently, in subsection (3), sub-subsections (i) and (ii) in particular.

Earlier drafts of this clause did not contain those particular matters. We have tried to spell out the criteria relating to "an unfair disadvantage" and "an undue obstacle" to the interchange of commodities. We also did a little research into the judicial interpretation of the phrase "public interest."

There are other cases lying outside our jurisdiction, but we are pretty satisfied that the normal interpretation is a broad interpretation which would take care of the points raised by Mr. Frawley.

Senator ISNOR: Mr. Chairman, I raised the question of the average tonnage of these cars because I thought it might fit into the formula.

Mr. BALDWIN: Oh, yes, it was Senator Isnor who raised that question.

Senator ISNOR: Yes, I asked Mr. Frawley that question. I wanted to ask Mr. Frawley, who presented his very fine brief in a very capable manner, whether he was representing the CPR or the Province of Alberta. And I ask that question because he has referred to the CPR repeatedly. I suppose the CNR and the Atlantic provinces would be in the same position. Is that right, Mr. Frawley?

Mr. FRAWLEY: The CNR and the Atlantic provinces would be what?

Senator ISNOR: Was lack of competition with the CPR the basis on which you used its name so often?

Mr. FRAWLEY: No. I refer to the Canadian Pacific Railway so often because the financial need of the Canadian Pacific Railway Company, Senator Isnor, is the only yardstick which the Board of Transport Commissioners can take. I



rather think that, when the new commission is set up, the costs of the Canadian Pacific Railway will be the basic costs which the commission will use as guidelines.

Senator ISNOR: Thank you. I wondered why you used it. Mr. Chairman, Mr. Frawley stated that he was invited to appear before this committee. Is that a correct statement?

The ACTING CHAIRMAN: Let us not quibble.

Senator ISNOR: Just a moment. I have a question.

The ACTING CHAIRMAN: Just let me add that it was indicated to me that Mr. Frawley wanted to know whether it would be possible to appear before the Senate committee and I said, "Yes, if there is a request, why, certainly, we will hear him." I fixed a time, therefore, and I said that we were going on on Tuesday and Wednesday and that if he were available on Tuesday I would like it, but if not, we would make it on Wednesday morning. How he got here is another question. There is the combination and he is here and he has made his presentation.

Senator ISNOR: I just wanted to make sure of that invitation.

The ACTING CHAIRMAN: He is not an intruder.

Senator ISNOR: That is fine. If he were, he would still be welcome.

The ACTING CHAIRMAN: Oh, yes.

Mr. FRAWLEY: I think I had requested the invitation in a letter, senator, and I am grateful to be here, because the committee need not have heard me. You must understand that I wrote a letter saying that I would like to be here.

Senator ISNOR: If Mr. Frawley were invited, was the Maritime Transportation Commission invited? It presented a very fine report or brief to the House of Commons.

The ACTING CHAIRMAN: Nobody was invited to this committee.

Senator ISNOR: Was the Port of Halifax Commission invited?

The ACTING CHAIRMAN: No, nobody was invited. So far as the two bodies you mentioned are concerned, having you here as a representative of those interests, I do not think we would need anything more.

Senator ISNOR: Thank you very much, Mr. Chairman. I try to look after their interests, but I am afraid I do so only in a very feeble way.

Senator ASELTINE: Do not be so modest.

Senator ISNOR: Mr. Frawley, your whole brief was more or less based upon the lack of competition in certain areas. Would you say that?

Mr. FRAWLEY: No. The point of my brief, senator, was that even where there is apparent competition there is no effective competition, if the railway is enabled to exact excessive contributions to overhead.

Senator ISNOR: Granted that, there is still competition entering into it, and I want to place before you, Mr. Chairman and members of the committee, that we in the Atlantic provinces have not the same competition as Quebec and Ontario. With that thought in mind I think the commission should bear in mind that our rates in the Atlantic provinces should be given very careful consideration.

The ACTING CHAIRMAN: They started off right away by reserving all the statutory provisions previously existing.

The one section outstanding is Section 53. Shall that carry?

Senator ARGUE: Might I ask one question of Mr. Frawley? I wonder if he would care to guess how this \$110 millions by way of subsidies, when it is raised in increases in freight rates etc. will be distributed among the various types of rates mentioned on page 2? Will the burden fall in somewhat the same manner

or will there be some real improvements? Will it be distributed so that the general burden will be spread in a fair and equal manner?

Mr. FRAWLEY: I would say that the same situation exists today as existed in 1958. The railway companies cannot put increases on competitive rates with any assurance that they will remain there because if competition becomes too keen they will have to remove them. But they can always put increases on class rates and non-competitive commodity rates knowing that they will stay there.

Senator LEONARD: But you must not overlook the fact that some of the subsidies will change from being general subsidies and will become special subsidies payable only in special circumstances.

Mr. FRAWLEY: I did not follow you too well when you spoke about subsidies. There have been some available pending the passing of this legislation. But I don't know of any subsidies in the freight rate structure at all. There is no subsidy in the Crownest Pass freight rate structure.

Senator LEONARD: I think either the minister or Mr. Baldwin said yesterday, when asked about the situation when a report is made to the Governor in Council and representations are made for special action, that it would come out of the public treasury.

Senator CONNOLLY: The minister has said that many times.

Mr. BALDWIN: There is provision in several places for governmental action to provide special subsidies where such duties would be imposed on the railways—that is public duties, so that they may not lose by this.

Senator THORVALDSON: This is the principle of the act.

Mr. FRAWLEY: There is nothing in this, with great respect, that envisages continuous subsidies. I do not know of any freight rates for movements in or out of Alberta that justify a subsidy.

The ACTING CHAIRMAN: You must be doing very well now.

Mr. FRAWLEY: Because we are able to pay our way, but we are paying on a false and wrong principle.

The ACTING CHAIRMAN: Shall Section 53 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: I do not know if Section 1 carried yesterday; shall Section 1 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.





First Session—Twenty-Seventh Parliament

1966-67

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

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**No. 12**

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*Complete Proceedings on the Bill C-229,*  
intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1965 to the 30th day of June, 1967, and to authorize the guarantee by Her Majesty of certain securities to issued by the Canadian National Railway Company”.

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THURSDAY, FEBRUARY 9, 1967

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WITNESSES:

*Canadian National Railway Company:* Norman J. MacMillan, President;  
Ralph T. Vaughan, Vice-President, and J. W. G. Macdougall, General  
Counsel.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable T. D'Arcy Leonard, *Acting Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Leonard,
Baird,	Macdonald ( <i>Brantford</i> ),
Beaubien ( <i>Provencher</i> ),	McCutcheon,
Bourget,	McDonald,
Burchill,	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> ),
Hollett,	Thorvaldson,
Isnor,	Vien,
Kinley,	Welch,
Lang,	Willis—(46).

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, February 6, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill C-229, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1965 to the 30th day of June, 1967, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Benidickson, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, February 9th, 1967.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

In the absence of a Chairman, and on Motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Leonard was elected *Acting Chairman*.

*Present:* The Honourable Senators Leonard (*Acting Chairman*), Aird, Aseltine, Beaubien (*Provencher*), Brooks, Burchill, Connolly (*Ottawa West*), Fournier (*Madawaska-Restigouche*), Gershaw, Haig, Hays, Hollett, Kinley, Lefrancois, McDonald, McElman, Pearson, Power, Roebuck, Smith (*Queens-Shelburne*) and Willis. (21)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion duly put it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-229.

Bill C-229, "Canadian National Railways Financing and Guarantee Act, 1965-1966", was read and considered, clause by clause.

The following witnesses were heard:

*Canadian National Railway Company:*

Norman J. MacMillan, President.

Ralph T. Vaughan, Vice-President.

J. W. G. Macdougall, General Counsel.

On motion of the Honourable Senator Haig it was *Resolved* to report the said Bill without amendment.

At 11.45 a.m. the Committee adjourned to the call of the Chair.

Attest.

Frank A. Jackson,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

OTTAWA, Thursday, February 9, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill C-229, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways system for the period from the 1st day of January, 1965 to the 30th day of June, 1967, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company", has in obedience to the order of reference of February 6th 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Acting Chairman.*

**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**

**EVIDENCE**

OTTAWA, Thursday, February 9, 1967.

The Standing Committee on Transport and Communications to which was referred Bill C-229, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1965 to the 30th day of June, 1967, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company, met this day at 10 a.m. to give consideration to the bill.

Senator T. D'ARCY LEONARD, *Acting Chairman*, in the Chair.

The ACTING CHAIRMAN: Honourable senators, the Senate has sent to us Bill C-229, to authorize the provision of money to meet certain capital expenditures of CNR. This is an important bill involving quite an authorization for this expenditure, and I would ask for the usual motion with respect to printing of 800 copies in English and 300 copies in French.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Hon. JOHN J. CONNOLLY (*Ottawa West*): Before you proceed with your work, I think, as Leader of the Senate, it is only appropriate that I should come here this morning to say to the new President of the Canadian National Railways, Mr. Norman J. MacMillan, how glad we are to see him here and how welcome he is, and to congratulate him upon the assumption of his new duties and responsibilities.

Mr. MacMillan is no stranger to this committee; he has been coming here over a number of years. I can shorten what I have to say about him by simply putting it like this. All honourable senators would want me to welcome him here as warmly as Senator Haig's father used to welcome him here when he came as Vice-President. He is known particularly to the westerners, although Montreal has adopted him. We are also very glad to see general counsel of Canadian National Railways, Mr. Graham Macdougall, and Mr. Ralph T. Vaughan, Vice-President and Secretary who, by the way, is a Nova Scotian. They are pretty representative geographically on the board of the Canadian National Railways.

The ACTING CHAIRMAN: Thank you. On behalf of the committee I am glad to endorse that welcome and I want to congratulate you, Mr. MacMillan, on your appointment.

This bill was sponsored in the Senate by Senator Benidickson and was explained by him. It was debated there, and unless there is something further to be said about it, I shall ask Mr. MacMillan to proceed with any explanation he desires to give us.

Senator ASELTIME: I would like him to explain the delay in presenting this measure to us. The appropriations for 1965 and 1966 have probably all been spent. That is one of the things that bothered us when looking at the bill. Why was there this delay in bringing this measure for our approval?

Senator ROEBUCK: I think there was some confusion with regard to the appointment of auditors and that might explain it in part.

**Mr. Norman J. MacMillan, President, Canadian National Railways:** Mr. Chairman and honourable senators, I should like to begin by thanking Senator Connolly for his very kind reference to me and also by expressing our thanks, and the thanks of the Canadian National officers who are here with me, for the cordial invitation to appear before you this morning. Because the bill also embraces in some of its sections references to Air Canada, I would like to amplify the introductions of my colleagues by saying that Mr. Vaughan, in addition to being Vice-President and Secretary of the Canadian National Railways Company is also Secretary of Air Canada. Mr. Macdougall, who is General Counsel of the railway company has been associated with Air Canada and its legal affairs for a long period of time. For myself, although my primary responsibilities are well known to you, I have been associated with Air Canada for 30 years in various capacities. Only recently I was also appointed to the board of directors of that company; so that we do come before you with some knowledge of the affairs of Air Canada in addition to the affairs of the Canadian National.

It is rather difficult for me to explain this bill comprehensively, and, as a result, it is not always too easy to understand the bill. I might begin by making a number of confessions, one being that I think that I, more than anyone else, am the father of this legislation in its present form.

Senator ROEBUCK: Is that a confession or a boast?

Mr. MACMILLAN: I think it is a confession, and you will see why later. This legislation evolved in its present form about 20 years ago, and the evolution was brought about because in its earlier form, I think it was utterly incapable of being understood. I know I could never explain it, and no one could ever understand my explanations.

The bill basically establishes a line of credit, and that really is its reason for being. It is the one deviation from that broad principle which is the opening language of paragraph (a) of subsection (1) of Section 3, where we use the language: "The National System is authorized (a) to make capital expenditures." This certainly expresses by way of statute the authority to make capital expenditures.

The confession I am about to make is that, under the Canadian National Railway Act, the main corporate statute of the railways, which was passed first in 1919, there is included authority to make capital expenditures. The statute provides that the capital budget of the railway shall be under the control of the board of directors and that the board of directors shall annually present to the Minister of Transport the capital budget. The statute provides further that the Minister of Transport shall, with the concurrence of the Minister of Finance, have the budget approved by the Governor in Council, following which it shall be tabled in the House of Commons. This constitutes the actual capital expenditure authority.

As I mentioned briefly before, the Financing and Guarantee Act, in the form in which it was when we relied entirely on that statutory authority, began by authorizing the railway to issue securities in a specific amount, and there was no identification between the amount of the securities to be issued and our capital budget. It was always extremely difficult to draw the thread between the



procedure which was provided for under the C.N.R. Act and the procedure provided for under the Financing and Guarantee Act.

It was because of this financing characteristic that this statute was given the name originally of the Financing and Guarantee Act.

There was another reason. The other reason was that, under our Canadian National Railway Act, we are not authorized to use the powers of the railway in matters of expropriation. Parliament provided a special code for us, stipulating that we would take our expropriation powers from the Expropriation Act of Canada. The Expropriation Act of Canada, being the next step, provides that the power to expropriate will lie when the expropriation is for the purposes of a public work. And a public work is defined as a work which has been authorized by Parliament or in respect of which Parliament has authorized the issuance of guarantee securities.

Senator ROEBUCK: That is of general application. That applies to the C.P.R. as well?

Mr. MACMILLAN: No, it does not. The C.P.R. powers lie under the Railway Act, and it is in this way we differ.

Under the budgeting procedure provided in the Canadian National Railway Act, Parliament as such normally did not approve the budget at all. Consequently, there was never any strict compliance with the requirements imposed on us under the Expropriation Act. Those powers are very seldom used but when they are used, when the need arises to use them, they should be unfettered.

We thought at that time—and I am talking now of a period of about 15 years ago, perhaps a wee bit longer—that we could cure both the difficulty of explanation of the bill and the other problem, the hiatus, by amending the bill to read that Parliament authorized the capital expenditures—as is now to be found in this particular paragraph (a) of the bill.

The real situation which prevails is that for the years 1965 and 1966 we followed the normal budgeting procedures provided in the Canadian National Railway Act. We compiled our budget, we transmitted it to the Minister of Transport, and it was in due time approved by order in council and tabled in the House of Commons. The actual dates, for your information—and I do not suggest you make a note of these—were that in 1965 the budget was fully approved by order in council on March 4, 1965; in 1966, the budget was approved on April 5, 1966. In both instances they were tabled within a reasonable time—I do not know the actual date—in both the Senate and the House of Commons.

The ACTING CHAIRMAN: Yes.

Mr. MACMILLAN: Now, if you would care to refer to page 2, subparagraph (i), there is a tabulation "Estimated Requirements in the Calendar Year 1965". Here we are dealing in terms of authorization, really, as I mentioned to you, for a line of credit, but not specific expenditures.

These are the totals which flow from the inclusion in our budget in both 1965 and 1966, of total projects, and they do not represent the money which we in fact spend.

It again is a line of credit. The machinery was adopted because normally that section would have been followed by a section permitting us to borrow, and the Minister of Finance to loan, the company the amount of money referred to in this tabulation. But we do not use this, we do not borrow money from the Minister of Finance, and therefore to some extent the tabulation lacks practical importance.

To give you an idea of what actually happened—one of the advantages of this being done in retrospect is that I can tell you what happened in these years—in this column (i) the six items actually totalled \$161,600,000, which is referred to at the bottom of page 1. That was the total of the budget on a projected basis.

At the time this was presented to Parliament, we indicated in the supporting material that we anticipated the cash expenditures against that would amount to \$146,600,000. The difference in the two figures comes about because of the fact that, where we get involved in expenditures of this order of magnitude, we know that everything will not be accomplished, but we cannot tell at that time in what areas we will be unable to accomplish our objective. Shortage of material, shortage of manpower, weather, change in plans, or other eventualities invariably bring about a reduction in the contemplated capital program.

In that year when the budget was prepared we made an arbitrary assessment that we would underspend the project by \$15 million, so we deducted \$15 million from the \$161.6 million, giving us a figure of \$146.6 million. The actual capital expenditure amounted to \$136 million in the calendar year 1965. Therefore, to the extent of the difference, this legislation provided the line of credit to which I refer.

Senator ROEBUCK: What is the difference between the road property and branch lines? Are not the roads branch lines as well?

Mr. MACMILLAN: Yes, they are, senator. The difference is that the branch line embraces those which come before you for specific statutory approval.

The ACTING CHAIRMAN: New branch lines?

Mr. MACMILLAN: New branch lines. We put them in really by direction of the Department of Finance many years ago, so that the entire finance requirements of the Canadian National are to be found in one place.

In each new branch line statute there will be found authority to build a branch line which could be taken as comparing with the authority to spend the money that is referred to in here, together with authority to borrow for the branch line. That, again, would be comparable to legislation in its normal form, but in the tabulation they are brought together because they do become part of our capital program.

The same story as I related with regard to 1965 is available with regard to 1966. The projects shown on page 2 total \$192 million, and, against that, at the time we filed that budget we anticipated we would only be able to spend \$172 million. In this instance we were out a wee bit, and we do not know yet, because our books are not closed for 1966, but perhaps we shall spend \$175, a bit more than we anticipated our cash requirements would be.

These are very large figures, and I should remind you—and I am sure some of you will recall—that in our capital program at all times are a number of items which, by virtue of their character, are continuing ones. They go on for some years.

A branch line is a good example. We may start a branch line as soon as the weather opens up in 1967 and not finish the line until 1969 or 1970. This expenditure will continue to appear in the intervening budgets, but it will become a declining item. So, in each budget we break them down between new and continuing projects.

For example, in 1966, in the total project tabulation of \$192 million there were only \$90.5 million of new projects. The other \$100 million was in respect of matters of the kind I referred to which had been going on for some years, and we are never able to cut them off at the end of the calendar year; they do, in fact, continue.

If you take these items—road property, branch lines, equipment, telecommunications and hotels—in our approach to the problem we break these down into innumerable different categories.

For instance, road property we break into lines and diversions. This is work done on existing lines, and it may be the adjustment of the curvature or diverting the line of railway avoid some physical condition—it may be to avoid a

developed portion of a town or city—and is included in here. This is not a large item.

The next item we use is roadway improvements. This embraces all our real housekeeping of the railway. It is the replacement of rail, ballast, ties and tieplates, and the physical fittings used on the actual railway itself. It is always the largest part, and it is the one in the budget which is forever with us, the continuation of the physical steel on the ground.

The next item we have is what we call large terminals. These are our yards. The small ones we put into roadway improvements. The large ones, such as the building of the humpyard in Winnipeg or Toronto or Montreal or Moncton, are in the category of large terminals. In addition to large terminals main, main flat yards such as at Port Mann, Edmonton, Sarnia, and others of that nature, are included in large terminals. These are incorporated on a program basis. When we determine upon them, we set the program as being a two- or three- or five-year program, and the expenditures continue over the actual period of the program.

Then we have yard tracks and buildings, signals, roadway, shop machinery and the general item, a catch-all item.

The ACTING CHAIRMAN: Does the grade crossing come under road property?

Mr. MACMILLAN: Yes, it does, under "general." These all constitute road property. Branch lines are those specific new branch lines which are authorized by special acts.

Equipment: This is reasonably self-explanatory. It covers locomotives, freight cars, new passenger cars, if we are buying any, and also highway vehicles—trucks, trailers, buses, and things of that nature, together with what we call additions and conversions.

In additions and conversions we include modifications to freight cars which are being perpetuated in their normal condition, but to which we are adding something. By way of example, we have, and every railway in North America has in its equipment inventory, a substantial number of ice-cooled refrigerator cars. These were the only type of rolling stock we had for a long time in which we could move refrigerated traffic.

Since about four years ago we have had under way a program to vary these cars by the addition of what we call indoor refrigerator units. This was a "first" for the Canadian National, and we experimented over a year or two and then embarked on a program. This is really a unit very much like the cooling unit used on highway trailers. It is larger and a little more efficient because of the greater need. We sit them right in the door. The car remains as it always was but this is, for our budgeting purposes, an addition to the existing rolling stock.

Conversions are self-explanatory. It is the item in which we take one type of car and convert it to a different use. That item, again, is always with us. It is this type of expenditure we embrace in equipment.

Telecommunications: This is a tabulation pertaining to our telecommunications arm, and we embrace in it all the items which we break into components for the railway. For example, we have a tabulation for inside plant, which is the switching equipment and other electronic apparatus which is put in buildings; and outside plant—pole lines, microwave towers and things of that nature, which do the job for the telecommunications arm which the railroad itself does for the railway.

Senator ROEBUCK: Do you get power for refrigeration from the wheels?

Mr. MACMILLAN: No, from little diesel oil-driven generators.

Senator ASELTINE: Are there separate generators for every car?

Mr. MACMILLAN: Yes.

Senator ASELTINE: Are there separate diesels for every car?



Mr. MACMILLAN: Yes. The real efficiency in the car flows from its independence and ability to sit it out. We prefer to generate the electricity in the wheels, but when it is stopped we lose the refrigeration.

Hotels: This item is completely self-explanatory. We have just about finished now our five-year program of renovation of our hotels, and those of you who are in and out of the Chateau Laurier are familiar with the efforts we have expended here.

These two items—the \$6½ million in the one tabulation and the \$6.9 million in the other—cover all hotels, and this is broken down normally, and in our tabulation, among the different hotels.

Senator BROOKS: Just as a matter of curiosity, what happens to the engines that the diesels supplant? They cannot be converted to do anything, but is there any market for them, or are they a total loss?

Mr. MACMILLAN: They were not a total loss, but they are all gone with the exception of a few which are around Canada in parks and places of that nature.

When the diesel electrics became available in the beginning we retired some locomotives which had run out their time. The steam days were subject to certain rules and regulations of the Board of Transport Commissioners which prescribed periods of time, at the expiration of which certain things had to be done. They had to be re-tubed, as we called it. All the tubes in the boilers had to be replaced for safety reasons. These were works required by the attrition of time. They did not represent wear and tear, or anything like that at all.

As we saw the new diesel power coming in and the phasing out of steam, we stopped doing re-tubing of these older locomotives, so when we did retire them there was very little value left in them, other than for scrap. We moved all the steam power to Stratford at that time, and some of you may recall that Stratford was exclusively a steam plant, a steam locomotive repair point. We knew then that with full dieselization Stratford's function would cease to be, so we moved all the power there and it was at Stratford it was cut up. By these means we were able to keep the shop in operation for a couple of years longer and permit the employees to be looked after during the phasing-out period. That is what happened.

Senator PEARSON: What is the life expectancy of diesel as compared to steam?

Mr. MACMILLAN: We always took the position that the steam locomotive would live forever. It didn't in fact, but that was a normal railway approach to the problem. We preserved the number of locomotive 6541, or whatever it was, and in the course of time virtually replaced everything else. We had locomotives in existence at that time that when they finally retired were theoretically 50 years old in some instances. Normally, they were not anything like that, but they could be renewed by replacing fire boxes, boilers, and so on. Diesel electric, on the other hand, is subject to obsolescence, because new techniques are evolving at all times. The normal life anticipated for the diesel was 25 years when they came into service originally.

Here again we could perpetuate them by replacing the diesel engine and replacing the electronics and replacing the traction wheels and the motors on the wheels, and if all those things were to be done it would continue to provide service, but as I intimated a moment ago, the components have been improved upon, the manufacture and design have radically been improved upon and now we are endeavouring in programs of that nature to build into the older locomotives the traction motors and diesel engines of new design.

Senator BURCHILL: In railway accounting, is there any formula for drawing the line between ordinary maintenance and capital?

Mr. MACMILLAN: I am not very much of an accountant. As a matter of fact I do not have too much understanding of the way the accounting is done, nor, I



confess, have I much sympathy on occasions. The Board of Transport Commissioners provided some years ago a code of uniform accounting rules. These were prescribed for all railways subject to the jurisdiction of the board. They are not always easily understood. I can give you a variety of examples. If we replace a single rail length, that is a length of rail which is 39 feet, on the main line because a rail has broken or deteriorated by use, then I am quite sure that is maintenance, but if we replace a half mile of rail in the same segment of the main line, some of that becomes capital. Why, I don't know. Similarly, if we take a box car which needs repairs, there are certain types of repairs which can be done and charged to operation and others that are charged to capital. I do not think this is a matter of dollars; I think there are other principles which they follow. The net result is that sometimes we embark upon a program of a particular kind, and about halfway through discover that it is not an operating charge—that it has become a capital charge, and vice versa.

Senator HOLLETT: In the Estimates of 1967, could you give some assurance that an allowance will be made for converting the narrow gauge railways in Newfoundland to wide gauge?

Mr. MACMILLAN: I would like to be able to do that, but I am sorry I cannot.

Senator HOLLETT: There is no hope whatever? You have been there for 30 years and you are a director of the company.

Mr. MACMILLAN: Well, I would hope to give a reasonable response, but as you can gather, senator, I think the mistake there was that it was not standard gauge in the beginning.

Senator HOLLETT: We were not a part of the Canadian nation at the beginning.

Mr. MACMILLAN: I know that.

Senator HOLLETT: But we did have certain promises. You have been there now for 30 years and you know about these promises. Surely something is going to be done. I imagine the railway in Newfoundland is not a paying concern and one of the reasons is that it is narrow gauge.

Mr. MACMILLAN: I am not too sure how far we are in our program at Port aux Basques at the moment. I am sure you know that as a consequence of this program and for the first time, as far as I know, there will be some standard gauge trackage built in Port aux Basques, but it will not be extensive.

Senator SMITH (*Queens-Shelburne*): Can you tell us what is the cost involved of putting a wide gauge railway and altering bridges to accommodate it from Port aux Basques throughout the province?

Mr. MACMILLAN: I would not like to estimate that, but I can tell you it would be a very, very large sum.

Senator SMITH (*Queens-Shelburne*): Would it be in the hundreds of millions of dollars?

Mr. MACMILLAN: Yes.

Senator HOLLETT: You must, however, give us credit for building this long before they were built on the mainland. I think a little consideration ought to be given to that.

Mr. MACMILLAN: Yes.

Senator HOLLETT: Can you tell me what it would cost to convert one mile of rail to wide gauge?

Mr. MACMILLAN: You cannot really guess at that, senator, because there are very few contiguous miles which are identically the same in character. It would depend upon the bearing power, the curvature, the construction of the sides and right of way, the bridges and culverts, and everything appertaining to it.

One aspect that probably most people overlook is that the problem is not a simple one of merely moving the rails out to four and a half feet apart, because that would mean that the railway would be out of commission for the entire period of conversion. What actually is required is the superimposition of a standard gauge rail upon the existing rail to permit of traffic moving during the entire period of conversion. In other words we would have to have a minimum of three tracks laid throughout, and most probably four tracks, and also we would have to do the same thing at each switch point and at each bridge and at each culvert. Then, even if that were possible, and I think it is possible but at a very large expenditure of money, there is the question of equipment. All the equipment presently in Newfoundland would have to be converted to standard gauge equipment, and during this transitional period there are still these attendant problems. There are many places in the world where this exists. In Australia, for example, you have this problem. I think they have four different gauges on the continent of Australia. Railways there are state owned and when they meet you have the problem of moving from a gauge of four-feet eight-and-a-half inches to a gauge of five feet. I understand that they lift the cars up and put new tracks under them at the point of interchange.

Senator HOLLETT: Thank you, I hope it will be done during your presidency.

The ACTING CHAIRMAN: Actually, he is wishing you a long life.

Mr. MACMILLAN: If I may go on to subsection (b). This subsection is very often difficult to understand.

Senator HAIG: You have not discussed investment in the affiliated companies.

Mr. MACMILLAN: I am sorry. This is a small item which embraces the capital contribution of Canadian National to railways which we do not fully own but of which we own a part. In this category I would mention the Northern Alberta, the Toronto Terminal Railway and the Shawinigan Falls Railway. In all of these we are in equal partnership with Canadian Pacific. Also included are two American Railways in Chicago, of one of which we own one-fifth, while in the other we have a one-twelfth interest. The other partners there are railways operating in that vicinity.

Senator HAIG: Does that include the Ottawa Terminal Railway Company?

Mr. MACMILLAN: It would have done, but in that case the National Capital Commission provided the expenditure required for this railway.

Senator ASELTINE: Will you explain exactly the connection between CNR and Air Canada for us. Why is this necessary? Has it been done before?

Mr. MACMILLAN: The Canadian National by the statute or by the Air Canada Act owns all its common stock. That probably accounts for Air Canada being included in this legislation. That is a matter of government policy. At the time Air Canada was created they determined that part of the capital requirements for Air Canada should be provided through the vehicle of the Canadian National. It is for that reason they always appear in our Financing and Guarantee Acts, and in our budget, as an item which is provided for under the legislation. They follow the same machinery as we do in terms of preparing their budget and having it presented for approval by the Governor in Council, and likewise it is approved.

Senator HAIG: You lend them the money and they pay it back?

Mr. MACMILLAN: Yes, we actually borrow the money from the Minister of Finance and it flows directly through us, through to Air Canada, and then on the way back it flows through us, through the Minister of Finance.

Senator ROEBUCK: Is there any advantage in that system?

Mr. MACMILLAN: I imagine the advantage is that, in the first place, we have the Financing and Guarantee Act every year. It obviates the necessity of another

piece of legislation which would do exactly the same thing for Air Canada as is done in here, and this legislation, as you will remember, in terms of borrowing power, is confined almost entirely to Air Canada.

As we go along through the act, I shall point out the only departure from that procedure.

In paragraph (b), where we are talking in terms of an aggregate expenditure of \$126 million in the year 1967, the first point I wish to make is that this is again in the nature of credit. The components of it are always specifically broken into the first budget presented thereafter. They are not additional to the tabulations which are shown. In the 1967 budget, these items which total \$126 million all become definitive and they move up, so it is not to be understood that they should be added to the specific tabulation.

The ACTING CHAIRMAN: Does that mean that the 1965 and 1966 Air Canada expenditures are in the two top tabulations?

Mr. MACMILLAN: No, they are in the Air Canada budgets for that year.

The ACTING CHAIRMAN: But not in any legislation?

Mr. MACMILLAN: Only the borrowing.

The ACTING CHAIRMAN: It is only the borrowing that becomes legislation.

Mr. MACMILLAN: Yes, for the six months. This is why I say it is really a line of credit. What this section provides is that the Canadian National is granted authority to pay obligations incurred prior to 1967, that is, up to December 31, 1966, that is, when the obligations have been incurred; but the authority to do this expires on July 1, 1967.

In more specific terms, the railway's component of the \$126 million is \$76 million and the Air Canada component is \$50 million. These are expenditures which can come along for payment during the period of year which falls between the end of the preceding calendar year and the date on which the Financing and Guarantee Act for the next year has been enacted. It is intended to look after that hiatus period.

When we picked the date July 1 in any year, it was picked because it was midway through the year and at that time normally the Financing and Guarantee Act had been enacted, because we normally get the Financing and Guarantee Act through Parliament sometime in May or early in June. The only magic of July 1 is the one that I have presented to you: it was picked because it normally ensured that the legislation would be passed by that date.

Senator THORVALDSON: Mr. President, before you proceed, I notice you have to borrow to discharge obligations that were incurred by Air Canada. What type of obligations were those and how did Air Canada finance those prior to your discharging them?

Mr. MACMILLAN: Air Canada for the past three or four years has financed itself entirely with self-generated funds, depreciation salvage, and other items of that nature. This is the first time of borrowing for at least four years.

In this particular case—we are talking now of the period in which we are, that is, January 1 to July 1, 1967—the \$50 million is required to permit of their taking delivery of three DC-8 aircraft which cost about \$9 million each, and six DC-9 aircraft which cost about \$4 million each. This involves a capital expenditure of the order of magnitude of \$52 million and this is in addition to their normal capital requirements during that period of time. The \$2 million, of course, they will find in their own self-generated funds during the first six months of 1967.

Senator THORVALDSON: All these airplanes will be delivered this year, or prior to July 1—or perhaps some have been delivered?

Mr. MACMILLAN: These specific aircraft will come along in this six-month period. Our item, \$76 million, is confined to equipment, rolling stock.



The next subsection, subsection (c), is authority, again in respect of this hiatus or interlocking period, January 1 in any given year to July 1 in that year, and has appeared in the statute for many, many years.

What we need here is really authority to proceed with the carrying on of our business, the ordering of new equipment, the entering into contracts, which we must do at that time, and if we do not make them at that time we will not obtain equipment until a full year has elapsed.

The next subsection, subsection (2), gives to the National Company, with the approval of the Governor in Council, the general authority to borrow from the minister funds for the advantage of Air Canada. They are required for the purposes which I have just referred to above, that is, the \$50 million.

The next paragraph is a general authority, authorizing us to issue securities for that purpose.

Then there are various statutory directions as to what happens about these things. We are required by statute, for example, to refer to these matters definitively in the next year's budget, which we always do.

Senator THORVALDSON: Those securities you referred to are direct securities of the railway company, guaranteed by the Government, is that right?

Mr. MACMILLAN: This is really the introductory portion of that, and we get the specific guarantees later on in the bill. What you said, senator, is correct, but the guarantee power does not actually lie there, it is referred to much more specifically.

The ACTING CHAIRMAN: It is possible that you might do your financing entirely through the Minister of Finance without proceeding to the public?

Mr. MACMILLAN: That is correct.

Section 4 is related to the issuance of securities by the National Company to the public for Air Canada. Then, on page 4, at the top, you have section 5, which authorizes the Governor in Council to guarantee these securities.

Section 6 grants authority to the Minister of Finance to loan us the money required by Air Canada and this is actually the section which is used. There has not been a public issue by Canadian National for the benefit of Air Canada for a long time—and I am not sure that there ever was one specifically for that purpose. The procedure is that we obtain the funds required from the Minister of Finance, they stand in their books in our name, earmarked for Air Canada. This is all done pursuant to section 6 on page 4. You will notice that there is broad gauge authority granted to the minister. The amount which may be loaned pursuant to the section is \$50 million, the same \$50 million.

Senator ASELTINE: Why is it \$50 million? Why is it not much more than that?

Mr. MACMILLAN: Because we just need \$50 million. In that section 3 where we ask for only \$50 million—

The ACTING CHAIRMAN: It is the cost of the new planes.

Senator ROEBUCK: Can you tell us more about what \$50 million is to be used for?

Mr. MACMILLAN: That is to be used to buy the three DC-8 and the six DC-9 aircraft.

Senator ROEBUCK: You have mentioned that.

Mr. MACMILLAN: Yes, I did.

In section 7 there is general statutory authorization to us, permitting the Canadian National to consolidate the capital requirements of our member companies, such as our telecommunications companies, our hotel companies, our various components. You will recall that there are a number of corporations embraced in the general terminology of "Canadian National Railways". This bill always stands in the name of Canadian National Railway Company. Then, as we



find it extended, to the national system, it is the National Railways under the statute.

Senator KINLEY: What is the position of the Canadian National Steamships?

Mr. MACMILLAN: That is one of them. We have Canadian National West Indies Steamships now—no, I am sorry, we do not; we have the Canadian Steamships on the west coast operating from Vancouver north to Prince Rupert, and so on.

Senator KINLEY: Plus the *Bluenose*, *Bar Harbor* and *Digby*—you have two there.

Mr. MACMILLAN: Ships? We have more than that, actually.

Senator KINLEY: Two main passenger ships?

Mr. MACMILLAN: Yes.

Senator KINLEY: Now you have them in the West Indies shipping, but you have them on inter-island journeys in the West Indies shipping, ships that we gave to the West Indies.

Mr. MACMILLAN: We do not operate that.

Senator KINLEY: Does that come under your department?

Mr. MACMILLAN: No, the Government did that directly. I do not think the Government of Canada operates that vessel.

Senator KINLEY: You donated the vessel?

Mr. MACMILLAN: No, it was not donated through us: it was donated by Canada.

Senator KINLEY: Do you contemplate any new ships for the West Indies trade?

Mr. MACMILLAN: Not at this moment.

Senator KINLEY: There is a rather completed arrangement for a ship to operate between Boston and Yarmouth, which the Americans are going to finance themselves. You know about that, I suppose?

Mr. MACMILLAN: Yes, I have heard about this.

Senator KINLEY: For many years, that was the main departure point from Nova Scotia for America, and it seems it is coming back; it seems to be a natural thing.

The *Bluenose*, of course, is farther up the bay, and there was a committee which wanted to put it down at Digby. You have made arrangements with the CPR to amplify that service across the Bay of Fundy, which has been very good. That does not interfere much with the *Bluenose*, does it?

Mr. MACMILLAN: It is too early to tell, really. But these discussions are actually in the hands of the Department of Transport. We are not carrying those discussions at all.

Senator KINLEY: But your directors still control the Canadian Merchant Marine; your directorate is still the directorate of the Canadian Merchant Marine?

Mr. MACMILLAN: I do not think there is any left. That company has been absorbed. We certainly did; 30 years ago it was the same group.

Senator KINLEY: Well, less than that.

Mr. MACMILLAN: Yes.

Senator KINLEY: But you have some of the ships on the Pacific?

Mr. MACMILLAN: No, we do not, in that name.

Senator KINLEY: It is pretty well disappeared. We have not much of a merchant marine now, have we?

Mr. MACMILLAN: No.

Senator KINLEY: Does the bill we passed yesterday, Bill C-231, have much association with the railroad? Does it interfere with your liberties at all?

Mr. MACMILLAN: I think it is rather difficult to answer your question categorically at this moment.

Senator KINLEY: All right.

Mr. MACMILLAN: If I may return: Section 8—

Senator THORVALDSON: Before you leave section 7, Mr. President, there is a phrase in here I do not exactly know the meaning of. It states:

The National Company may aid and assist, in any manner—

—and what does this mean:

—not inconsistent with section 3, any others of the companies and railways—

—and so on. Does that mean you just must not overspend?

Mr. MACMILLAN: That is right. Under section 3 we are restricted to expenditures in the category to a given amount. This section says we cannot give to one of our shipping companies more capital assistance than has been included in the budget—just by way of example.

Then on section 8, this is a requirement which we have always had, that if we do go to the public and sell bonds the proceeds shall be deposited to the credit of the Minister of Finance initially, and then paid out by him.

Sections 9 and 10 are really in identical language, except that section 9 deals with Canadian National and section 10 deals with Air Canada. They provide that at any time before July 1, 1967—and this, again, has been repeated year after year—where the earnings of the railway are insufficient to meet its operating requirements, then the Minister of Finance may advance moneys to cover the deficit. The same authority is granted to Air Canada.

The basic reason for this is that in the first few months of every year every transportation company is in a deficit position, and they have to pick up the losses as the year goes on. This is the same provision as has been available for many years.

The ACTING CHAIRMAN: Mr. MacMillan, your auditors keep reporting the fact of the matter is it leaves you for the last six months without any statutory authority for financing your deficit. They seem to suggest that some procedure should be devised by the Government to provide authority to appropriate moneys to make deficit payments on a definite basis. Is this, in fact, a practical problem?

Mr. MACMILLAN: The practicalities are that we are able to finance.

The ACTING CHAIRMAN: You have some other authority?

Mr. MACMILLAN: Yes.

Senator THORVALDSON: Further to that, Mr. President, does the CNR finance in the same way as other companies, through banks?

Mr. MACMILLAN: No.

Senator THORVALDSON: Are items like this carried by bank loan, as would be the case in an ordinary company?

Mr. MACMILLAN: No, the banking for the CNR is done by the Minister of Finance under this section. The subsection, in both cases, is a direction to both the railway and Air Canada to repay the advances when the operating revenues are sufficient to permit that being done.

Sections 11 and 12 are sections which appeared in 1952, and they were part of the package of the Canadian National Railways Capital Revision Act. In both instances the authority included in 1952 expired, and these sections have been

incorporated in every financing guarantee act subsequent to the expiration, and they continue the principles of the original Capital Revision Act.

The first one deals with the company being relieved of the payment of interest on the sum of \$100 million. And the second provides for the purchase by the Minister of Finance of 4 per cent preferred stock in an amount equal to 3 per cent of our gross earnings per annum.

Senator ROEBUCK: Why should you be relieved of that interest repayment indefinitely?

Mr. MACMILLAN: Just because it was part of the package of the 1952 Act. That Act contemplated the whole question would be reviewed in 10 years, and the 10-year period has now ended.

Senator ROEBUCK: What was the money got for?

Mr. MACMILLAN: We never did get the \$100 million that is referred to here. It was really a means adopted to relieve us of a fixed charge, and it was unrelated to anything, but it was included, and for a 10-year period.

Senator ROEBUCK: Repayment was deferred for 10 years, without any interest?

Mr. MACMILLAN: That is correct.

The ACTING CHAIRMAN: I think the bonds actually mature in 1972.

Mr. MACMILLAN: Yes, they do.

The ACTING CHAIRMAN: But the original capital revision provided for a moratorium on interest for 10 years, and that moratorium has been carried forward from year to year.

Mr. MACMILLAN: That is right.

The ACTING CHAIRMAN: The capital revision took the old capital of the CNR and changed it all, and gave a certain amount of stock.

Senator ROEBUCK: Why not give them the \$100 million, and have done with it?

Mr. MACMILLAN: We would have found that quite satisfactory!

Senator ROEBUCK: I think it would be a better idea than having an item in the books like this, and deferring the interest payment on it indefinitely from year to year.

The ACTING CHAIRMAN: I presume they expect there will be one more revision of the capital of the CNR.

Senator THORVALDSON: Is this the only obligation that has been assumed by the federal Government in regard to the revision of 1952?

Mr. MACMILLAN: No, in 1952 there was a much larger recapitalization. As I said, this was part of the package. The Capital Revision Act at that time was intended to be a package determined upon for a 10-year period. The whole question was to be re-examined at the expiration of the 10-year period. The real effect is to extend what was intended to be a 10-year period, and it has now become a 14-year period.

The next section is one which is really included in this bill only for convenience. It is the appointment by Parliament of the independent auditors of the Canadian National, and the appointment is that of the Touche, Ross firm of Montreal and Toronto, for the years 1966 and 1967.

In respect of 1966 they carried on primarily because they had been appointed auditors prior to that by Parliament. It was, no doubt, the will of the Government that they continue. We do not appoint the auditors at all, and they were named in several references before the House of Commons.

Senator ROEBUCK: They did actually carry on their continuous audit?

Mr. MACMILLAN: Yes, exactly the same as they have always done. They are here all the time, they have a large staff which is in our buildings at all times.



Senator ASELTINE: How long have they been auditors?

Mr. MACMILLAN: I think three or four years, something like that. Prior to that it was DeLalanne of the McDonald Currie firm.

Mr. Chairman, that is my explanation of the bill. I will be delighted to try to answer any questions.

Senator THORVALDSON: I have one question I would like you to clear up in relation to this question of capitalization. Do any of the various subsidiaries have direct capital obligations either to the public or to some other place?

Mr. MACMILLAN: No, not to the exclusion of the system. Air Canada's capital positions tabulated and it exists independently of Canadian National, but the Canadian National budget embraces all capital obligations of all components of the railway, and they are consolidated in this bill.

Senator HAYS: I have a question which may not relate directly to the bill but which does relate to rolling stock. How much grain can you and Canadian Pacific carry for export?

Mr. MACMILLAN: Unfortunately I do not have my charts with me. I give a lot of attention to this. I can say this, that to take the two properties together, I think we are almost at the peak of our ability. We still have some elasticity, but not a very great deal, and it is giving us some concern, frankly.

Senator HAYS: Are there any provisions in your budget so far as rolling stock is concerned, and in saying this I am looking into the future, to make it adequate to carry 800 million bushels? It seems to me that at \$5 a ton for fertilizer, on 29 million acres, it will give something like 1,100 million bushels of wheat each year under normal conditions. How is the railroad going to do its part so far as the carrying of this is concerned?

Mr. MACMILLAN: I should say that we are very conscious of the possibility you mention. We are also very conscious of the fact that we can easily find ourselves faced with the movement of one billion bushels of wheat. It is very much in our minds but we do not think it is likely to happen this year, and we do not think it will take a big jump all of a sudden but there are very definite indications of this occurring in the foreseeable future.

There are many facets to the movement of grain, as you know, and the railways only provide what I might call the middle link in this chain. We do not originate the movement of grain nor do we finalize it, and the real problem facing us in this matter lies not in the lack of ability of the railroads to move the grain but in the problems at the original collection points and their ability to handle tonnage of this magnitude, and also the export handling facilities being able to dispose of grain in such quantities. It is all that many of these locations can do now to handle what is going through, and this applies to the country elevators as well as to the export terminals. The whole problem is really to try to bring all of these three components into harmony, and when the time comes I hope the railways will do their part.

Senator HAYS: You are getting geared to this sort of production?

Mr. MACMILLAN: We have spent a great deal of time on it.

Senator HAYS: What about the export facilities at Vancouver and at Montreal?

Mr. MACMILLAN: The Government is very much aware of this problem. The departmental officials are aware of it and there are studies under way as far as I know, at this very moment into the question of how to resolve the problems of trans-shipment. The only way that this can be accomplished is by very substantial expansion of the facilities, and, in addition, the variation of some of the equipment and the apparatus. It is really a question of examining the methods which have been used traditionally in some of these export terminals.

Senator HAYS: Can you carry 800 million bushels by 1969?



Mr. MACMILLAN: Yes, we could.

Senator HAYS: And you are geared to do this now?

Mr. MACMILLAN: No, we are not geared to do it now.

Senator HAYS: But you would be by then?

Mr. MACMILLAN: That depends upon the ability of the collection points to give us 800 million bushels in the first place, and the ability of the export terminals to take it from us. One of the great problems we have always had in the movement of grain was the fact that really there are three different parties involved. There are the operators of the line elevators, and these vary in size from being very small elevators to quite large elevators as they now have. Once the railway car is loaded at these elevators, then that entity has been satisfied or that requirement has been satisfied and then we move the grain to one of four different outlets.

To obtain the greatest efficiency on the railways, we must be able to unload the car of grain as soon as it reaches its destination, and we cannot move enormous tonnages unless we get the turnaround of the equipment, but we find all too frequently that cars are taken on and loaded and they are not offloaded sufficiently quickly, and we lose the cycle. This results in a problem which compounds itself. In the first place we require many cars to move a constant flow of grain. Secondly, we need more tracks on which to place these cars where we are moving into a congested position, and we need more locomotives, and we need much larger railway plant than we would if we could put grain into our rolling stock and really use it as a belt line where the cars are in motion all the time. That is what is really required to move these large tonnages.

Senator HAYS: What do you do in regard to planning? I will give you an example of my own particular case. I have been able to move 15,000 bushels of grain, and I have another 85,000 which I have not been able to move. This situation has been going on for years. Take the situation of malting barley, I could move two cars if there were cars. The deadline for this is February 28. If I don't move it by then I don't sell it. Having regard to the moisture content I could grow twice as much grain this year. But there seems to be a great problem with regard to moving this grain and accepting it. It does not take much fertilizer to almost double the proper moisture conditions of the present.

Mr. MACMILLAN: I am quite aware of that.

Senator ROEBUCK: Has any estimate been made of how long the fertility of our soil will stand the constant increase in the production of grain?

Senator HAYS: I can answer that question for you. Forever.

Senator ASELTINE: The top soil is 50 feet deep where I live.

Senator McDONALD: Is it not true that in many respects railroad cars spend a longer time either parked at country elevators or at terminal points than they do in transit between the elevators and the terminal?

Mr. MACMILLAN: They spend four times as much.

Senator McDONALD: In other words your facilities are geared to move this grain. They are much further advanced for moving 800 million bushels than either the country elevators or the terminal elevators?

Mr. MACMILLAN: That is right.

Senator THORVALDSON: In regard to this problem, you said a moment ago, that the matter was being worked on—by committees, presumably. Is there sufficient liaison at the present time in those studies as between the elevator people and the terminal people, who are largely the same as the owners of the terminal elevators, and the railways? Is there liaison between those interests, to find a solution to the problem which I think all of us in western Canada know is going to be a most difficult one?

Mr. MACMILLAN: I would answer your question by saying that in recent years we have established a very excellent relationship. There was a period of time prior to that when there was very little contact. As a matter of fact, I think most of us spent our time trying to find ways and means of blaming the other fellow. That is what happened. But that is no longer true. We have good relations with the Wheat Board and all the elevator companies and the pools who are involved in this problem. There is much more awareness of the problems than there was two or three years ago and there is a great deal of conversation going on between them pretty well all the time.

Senator BURCHILL: In the export, you are not overlooking the Maritime ports of Halifax and Saint John, I hope.

Mr. MACMILLAN: No, no; I was very careful not to name any ports.

The ACTING CHAIRMAN: First of all, perhaps I should thank Mr. MacMillan for his very able, excellent and comprehensive explanation. It is quite evident that he has had the experience of years in the business.

Senator McELMAN: Mr. Chairman, before you move on, the President has mentioned the new equipment, the DC-9 aircraft. Can he tell me how many are in service now?

Mr. MACMILLAN: Mr. Vaughan probably knows.

Mr. Ralph T. Vaughan, vice-president and Secretary, Canadian National Railway: There are six in service now.

Senator McELMAN: And you are acquiring six more?

Mr. VAUGHAN: Mr. MacMillan mentioned six coming before July 1, 1967. Eventually I think they are planning on 30 or 32.

Senator McELMAN: Are any of these new purchases meant for service in the Atlantic provinces?

Mr. VAUGHAN: Yes. I have no doubt about that.

Senator McELMAN: The reason I ask is that I am from New Brunswick and we have, I guess, the only capital city in the nation that has no rail passenger service by any of the railways. Air Canada has improved its service somewhat. Recently we are getting some Vanguards. I have reason to believe that for all flights out of that area, and I think your records will show the position, there seems to be a pretty strong feeling that additional services should be provided, and a jet service. Out of the Atlantic area presently there is no effective jet service.

Mr. MACMILLAN: That is correct, and we are quite conscious of this. I will bring your remarks to the attention of the management of Air Canada. The problem, of course, has been that we had but a limited number of DC-9 aircraft available and they have been placed in service in locations in which we can get the greatest utilization from them. As others become available, they will supplant the Vanguard services and the services performed now with Viscounts. I know this has been a question which has arisen in the Maritime provinces on several occasions quite recently, and we have had discussions about it and these are the plans. They plan to extend the service as much as the availability of equipment enables it to be extended.

Senator McELMAN: My only point, Mr. President, is that you say the DC-9's have been put in service where the greatest utilization possible is available. They are also duplicating DC-8 routes, you will agree, while the Atlantic area still waits for jet services. We are happy to know that finally we are getting some consideration.

Senator THORVALDSON: While you are on the DC-9's may I compliment you on the service we get from the DC-9's from Ottawa to Manitoba.

Senator HAIG: In your hotel amortization, have you a planned program for the whole country, from east to west?

Mr. MACMILLAN: Yes, we have, Senator Haig.

Senator FOURNIER (*Madawaska-Restigouche*): Going from jets to taxis, is there any hope that the taxi service would be improved from Ottawa station to Ottawa in the near future?

Mr. MACMILLAN: We have a great problem there.

Senator FOURNIER (*Madawaska-Restigouche*): So have we.

Mr. MACMILLAN: We anticipated and understood there was to be a very fine bus service from the station to other parts of the City of Ottawa and also that there would be adequate taxi service provided. These things have not always worked out as we had hoped they would. I can tell you that there are active conversations going on right now about this. There were discussions yesterday and I understand they are going to be resumed today, to see if we can do something about it.

Senator FOURNIER (*Madawaska-Restigouche*): Thank you.

Senator ASELTINE: Would you care to make any statement with respect to plans for passenger services in addition to your red, white and blue system, and the turbo trains to Expo, and the other cross-country trains that I mentioned in the Senate chamber the other day when I was speaking on the bill.

Mr. MACMILLAN: I should be delighted to try and tell you a little bit about our passenger business. It is one subject which invariably provokes interest. We have, I think, now one of the best passenger businesses, and passenger services, available anywhere on the continent. It will be improved upon. We are expecting delivery of the first of our turbo trains in the next few months. These trains have had a great deal of publicity.

They are quite unconventional, in that there is no locomotive, as we have known them in the past. The lead car and the trailing car have a little dome, so we call them the power dome cars.

The power is provided by turbines, which in turn operate electrical generators in one variation, and in the other drive a transmission; and the power is transmitted to the wheels either through electricity or transmission.

The turbine itself is about  $3\frac{1}{2}$  to four feet in length and is lying on its side, perhaps about 30 inches in diameter, at its widest point. If my memory is correct, it weighs 350 pounds. Two of these, operated in tandem, constitute the power in the power dome car.

In concept, we are going to put five passenger carrying cars in the middle and a power dome heading in both directions, at both ends, so that it becomes a completely articulated unit of seven cars. This is the turbo train.

These trains are capable of very high speeds. They will be heated and cooled by electricity. All of the electrical requirements of the train are provided by a turbine, exactly the same as those used for locomotion. The train itself has quite a different contour to a conventional train. It is slung much closer to the rail.

There is really more room inside the cars, but the cars are lower, they are flattened out and a wee bit wider.

The doors inside are in the centre of each car. The cars are permanently connected and can only be uncoupled in the shops. It was for that reason I described them as an articulated unit. Doors give access, of course, to the floor of the car, and an integral part of the door is a set of stairs which, for a station like Montreal's central station, are inside the car because the floor of the car is lower than the platform. One then will go down two steps into the car. In a station like the one in Toronto or Winnipeg or Vancouver, the stairs fold out and go down because the platform is lower than the level of the car. This is all done automatically.



The meals service on the train will be of two different varieties, as will the seating accommodation. We plan to have in the coaches very comfortable seating arrangements, and associated with this type of accommodation will be a snack bar where passengers may buy food in packaged form—sandwiches and things of this kind.

Then, in what I think we are going to call the club cars, as opposed to chair cars, because the service is going to be somewhat different, the type of meal service which has been found so satisfactory on aircraft is going to be used, and we will have personnel in each car who will look after the occupants of that car and will bring their meals to the seats and give them anything else they may wish to have.

Senator THORVALDSON: Ice water!

Mr. MACMILLAN: Yes. The intentions are to use two of these seven-car trains, again coupled in tandem, and run them between Montreal and Toronto in both directions, three times a day. So we will have 14 cars leaving Montreal for Toronto quite early in the morning, and leaving Toronto for Montreal at the same time. We anticipate the running time will be of the order of four hours, thereby cutting an hour off the present time.

We hope to turn the train at its destination inside the hour, and return to the point of origin, and then turn it again, late in the afternoon, and make another single trip. So that in this way we will have this equipment in motion for a minimum of 12 hours each day, and dedicate it to the service for two or three hours more—15 hours, perhaps, per day; and it is by these means that we expect to gain very substantial advantages.

Associated with that—and your question, senator, was a very broad gauge one—

Senator ASELTINE: What is the expense of the operation?

Mr. MACMILLAN: We think the expense of the operation in this utilization will be substantially less than the conventional train as we know it today. Part of that flows from utilization rather than direct cost of operation, because the idle time on any type of railway equipment is very expensive to us. The same is true of aircraft. When an aircraft is on the ground, it is a complete lossleader; you are not earning any revenue from it. Similarly, when the train is stopped, there is no revenue being earned either.

Associated with this train we will have in operation this summer, some time, out of Toronto another type of new equipment which we have bought from the Hawker Siddeley Company. It is an aluminum-stainless steel combination, as I recall, light-weight car. We are going to run these. We have bought five trains of five cars each. These will pull with diesel electric locomotives, one unit each, which we will be able to do because of the reduction in the dead weight of this new type of car. They will operate basically out of Toronto and towards the Niagara frontier—Windsor, Sarnia, and down into the territory such as Guelph, Kitchener—and, in all probability, also north of Toronto. This, in some ways, is an experiment. If it works out well, as I certainly hope it will, then it points the way to some further development.

I should say to you that it is extremely unlikely that Canadian National in the future will buy any more conventional passenger equipment. I am using the word "conventional" in the sense of heavy-weight steel equipment of the type we bought 15 years ago, because we think the future lies in the utilization of much lighter-weight equipment. In the first place, we can buy it more economically; we can operate it very much more economically; and we can maintain it more economically, thereby getting greater utilization from it.



Senator SMITH (*Queens-Shelburne*): Would you like to comment on the relative safety factors in connection with the proposed change-over from heavy metals to lighter metals?

Mr. MACMILLAN: The interesting part of this is that there is no sacrifice of safety at all. As a matter of fact, in many instances there is greater safety in the utilization of these alloys and lighter-weight materials.

Perhaps I misled you when I said "lighter weight." I did not mean lighter in bulk or in strength at all. What I meant was lighter in avoirdupois; they do not weigh as much; but they do have the ability to comply with all the safety standards which have been prescribed by both the Board of Transport Commissioners and the Interstate Commerce Commission. All our equipment is subject to test in these respects.

Senator KINLEY: Of course, aluminum is much lighter than steel.

Mr. MACMILLAN: Yes, it is. But there is a new steel which is very much lighter than old steel; this is the type we are using.

Senator THORVALDSON: What is going to be the passenger capacity of this train you refer to, this seven-car train that will operate between Montreal and Toronto?

Mr. MACMILLAN: We put the two together; it is about 620.

Senator THORVALDSON: That is in 14 cars?

Mr. MACMILLAN: Yes. The car you know today is 85 feet long. These cars, I think, are only 40 or 42 feet long, so they are not to be compared with the old car.

I omitted to say there are no doors in between cars. This is all open, so once one gets in the train it ceases to be several cars; it is one continuous unit.

Senator PEARSON: Will the construction of the car allow easier travel around curves?

Mr. MACMILLAN: Yes, the centre of gravity is very much reduced and the truck system is entirely changed. Each car has but two wheels rather than two sets of four-wheel trucks.

Senator O'LEARY (*Antigonish-Guysborough*): Is the line between Montreal and Toronto under the centralized control system?

Mr. MACMILLAN: No, we have three types of signal on that line at the moment. We are in the middle of a program of converting it all to centralized traffic control. It will take about three years more to complete it. We have C.T.C. between Montreal and Coteau, and also between Toronto and a point a short distance east of Oshawa. There is an automatic block system in between, but as time goes by it will all be the same.

Senator ASELTINE: Have you any comments to make on your transcontinental passenger trains?

Mr. MACMILLAN: Well, the transcontinental service is a very substantial part of our operations, more than it used to be. It gives us great problems. This is particularly so in the summertime because of the demands made upon us to accommodate passengers. Not many years ago we did all the work we had to do with one train, and then we inaugurated the Panorama. Both of these trains originate in Montreal and Toronto and come to a common point at Capreol, where we join them together. Then we run the Supereontinental as a fast train from Toronto to Vancouver, and another from Montreal to Vancouver, and have the combination of the Panorama behind it. But we still have had demands which are very, very heavy on us. This summer will be a case of more of the same.

Senator BURCHILL: Mr. Chairman, do you think this would be an appropriate time for me to bring up the matter I raised the other evening about passengers travelling from New Brunswick?

The ACTING CHAIRMAN: I wondered if you intended to speak to the President about that. Perhaps there will be time for you to do so afterwards.

Senator KINLEY: What about the hotels, Mr. Chairman? Your hotel in Montreal is now under Hilton management. Do you find that private management is better than railway management for the hotels?

Mr. MACMILLAN: Well, when we made the original agreement with the Hilton company we did so for a very specific purpose. It was simply this; this hotel, the Queen Elizabeth, was determined to have a much greater function to perform as a large convention hotel than in any other way, and to make it succeed it was necessary that there should be available enormous convention-gathering capabilities, and that is why we made the deal with the Hilton company.

Senator KINLEY: I might say that I still think the Chateau Laurier is the best hotel in Canada. I remember some years ago when Mr. Balfour, former Prime Minister of Great Britain, was here. He said to us "Boys, I have been all over the world and I want to tell you that the Chateau Laurier is the best hotel I have ever been in." For myself I prefer the old-fashioned way of the Chateau to the 'shakedown beds' of the new hotels.

Senator SMITH (*Queens-Shelburne*): I have a question to ask with regard to the training of employees dealing with passengers. Has there recently been a training program to elevate the standard of courtesy of all employees in the passenger service?

Mr. MACMILLAN: About two years ago we embarked upon a very intensive training program for what we call the "out-front" employees. These are the employees who manage the ticket offices, the gates and the trains, and we have done our very best to train them in the duties which they must perform of the passengers.

Senator SMITH (*Queens-Shelburne*): All I wanted to say is that this program has been a great success because for the last two years I have seen quite a difference in the attitude of everybody I have come in contact with. Starting out with the new uniforms, which is all part of the new approach to the passenger, I noticed, and I have been interested in this subject, that no matter what kind of clothes a passenger wears he gets every courtesy from your employees. I am not sure that that has always been the case. It is a good program and it is working well.

Senator ASELTINE: I have also heard this being remarked upon by passengers from the United States and other countries.

Senator HAIG: I move that the bill be reported without amendment.

The ACTING CHAIRMAN: Do you wish to deal with it section by section or do you wish to have the bill reported in accordance with Senator Haig's motion?

Hon. SENATORS: Report the bill.

The ACTING CHAIRMAN: Very well. I want to thank Mr. MacMillan for the excellent presentation he has given to us and to assure him that we look forward to seeing him here again on future occasions.

The committee adjourned.



















First Session—Twenty-Seventh Parliament  
1966-67

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

## TRANSPORT AND COMMUNICATIONS

---

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

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No. 13

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*Second Proceedings on the Bill S-44,*

intituled:

"An Act to amend an Act to incorporate the Richelieu Bridge Company".

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THURSDAY, FEBRUARY 23, 1967

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WITNESSES:

*Department of Public Works:* Lucien Lalonde, Deputy Minister; *Province of Quebec:* The Honourable Paul Martineau, Counsel for the Department of Justice.

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Salter A. Hayden, *Acting Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Leonard,
Baird,	Macdonald ( <i>Brantford</i> ),
Beaubien ( <i>Provencher</i> ),	McCutcheon,
Bourget,	McDonald,
Burchill,	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	McLean,
Davey,	Méthot,
Dessureault,	Molson,
Dupuis,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska- Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Reid,
Hayden,	Roebuck,
Hays,	Smith ( <i>Queens-Shelburne</i> )
Hollett,	Thorvaldson,
Isnor,	Vien,
Kinley,	Welch,
Lang,	Willis—(46).

*Ex officio members:* Brooks and Connolly (*Ottawa West*).

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 8, 1966:

"Pursuant to the Order of the Day, the Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill S-44, intituled: "An Act to amend an Act to incorporate the Richelieu Bridge Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Deschatelets, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, February 23rd, 1967.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

In the absence of a Chairman and on Motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Leonard was elected *Acting Chairman*.

*Present:* The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Beaubien (*Provencher*), Gelinas, Gershaw, Haig, Hollett, Kinley, Smith (*Queens-Shelburne*) and Welch. (10).

*In attendance:* R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Senate Committees Branch.

Bill S-4, "An Act to amend an Act to incorporate the Richelieu Bridge Company", was further considered.

The following witnesses were heard:

### DEPARTMENT OF PUBLIC WORKS:

Lucien Lalonde, Deputy Minister.

### PROVINCE OF QUEBEC:

The Honourable Paul Martineau, Counsel for the Department of Justice.

On the suggestion of the Chairman, it was Ordered that the Clerk have these proceedings printed as quickly as possible and send copies to all parties concerned; and that further consideration of the said Bill be now adjourned.

At 10.50 a.m. the Committee adjourned to the call of the Chair.

Attest:

Frank A. Jackson,  
*Clerk of the Committee.*



**THE SENATE**  
**THE STANDING COMMITTEE ON TRANSPORT AND**  
**COMMUNICATIONS**  
**EVIDENCE**

OTTAWA, Thursday, February 23, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill S-44, to amend an act to incorporate the Richelieu Bridge Company, met this day at 10.00 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard, Acting Chairman, in the Chair.

The ACTING CHAIRMAN: Thank you, honourable senators. The committee is continuing the discussion on Bill S-44, an Act to amend an Act to incorporate the Richelieu Bridge Company. This bill was referred to the committee last December. The committee held a meeting on Wednesday, December 14, under the chairmanship of Senator Hugessen, at which evidence was heard. That meeting was adjourned to resume again at the call of the chair as and when an opinion was obtained from the Department of Justice with respect to some aspects of the bill.

We have before us this morning two witnesses for the Department of Public Works, Mr. Lucien Lalonde, the Deputy Minister, and on his right Mr. Peter Sorokan, Chief of Legal Services. On my left is the Hon. Paul Martineau, Counsel for the Department of Justice for the Province of Quebec, who is in the position of being rather a guest witness here.

Now, an opinion has been received. Are there any preliminary questions before we proceed? There has been received an opinion from the Deputy Attorney General and I think I had better ask Mr. Lalonde, to whom the opinion was directed, to speak to that. The opinion should really form part of the proceedings; therefore, Mr. Lalonde, if you have the original or are prepared to say you have a copy which is a true copy of the original, perhaps we should then have the opinion read. I think it is important.

Lucien Lalonde, Deputy Minister, Department of Public Works: Thank you, Mr. Chairman. This is the opinion which I received from the Deputy Attorney General as a result of the request of this committee:

Dear Mr. Lalonde:

I understand you wish my opinion on the following questions:

1. Does an Act to incorporate the Richelieu Bridge Company (1882) 45 Vict. c. 91 prohibit the Government of the Province of Quebec from erecting a new bridge across that part of the Richelieu River which commences three miles north of the bridge authorized to be constructed by the said Act and ends at the province line on the south side of same?

2. If section 18 of the said Act is repealed, what will be the legal effect of such repeal? In particular, will the province be empowered to expropriate the bridge which was authorized to be constructed under the said Act?

In my opinion, Question 1 ought to be answered in the negative; the normal rule is that a statute does not apply to the Crown unless it is stated the Crown is bound thereby.

With regard to Question 2, it is my opinion that, if section 18 of an Act to incorporate the Richelieu Bridge Company is repealed, the bridge in question would no longer be "a work for the general advantage of Canada" within the meaning of that expression as used in the British North America Act. The result of this is that Parliament will no longer have jurisdiction over the work as such, although it continues of course to have jurisdiction in relation to navigation and shipping. On the question whether the Province of Quebec could expropriate the bridge, I am of the view that it could not, because that would destroy the undertaking of a federally incorporated company.

Yours truly,  
(sgd) E. A. Driedger.  
*Deputy Attorney General.*

The ACTING CHAIRMAN: Do you wish to speak further on this matter in the light of this opinion?

Mr. LALONDE: Perhaps it might be of interest to the committee to know that the first part of the opinion, although it is the first time the department has it in writing, is not entirely new to the department. Some time ago when we started to discuss this with the Province of Quebec we were told by our own solicitors verbally that they thought that the answer to the first question—does that section 12 prohibit the province from building on each side of the bridge—appeared to be that the Crown in the right of the province was not affected by that section. We had meetings with representatives of the Province of Quebec at which time we told them that this was the view of our own lawyers, and the representatives of the province said they would consult their own lawyers about this and came back and told us that they did not agree entirely with this point of view, and that at least in the opinion of their own lawyers it was just an opinion and could be argued one way or the other.

At that time the department was discussing with the Province of Quebec the question of jurisdiction over a number of bridges, in particular six bridges of different capacity and different types all located within the Province of Quebec that had been built quite some time ago by the federal Government at a time when the question of jurisdiction was not quite so clear. These, as I say, were built by the federal Government and were all within the Province of Quebec and could be designated as intraprovincial bridges. We in the department felt that jurisdiction having been clearly established with regard to roads and bridges within the province that this antiquated status should be corrected and we asked the province if they would assume in future the responsibility for maintenance, operation and looking after these six bridges. While we were discussing this they said "We agree with you that these bridges are now entirely within the jurisdiction of the province and therefore should be our responsibility and not yours. But there is one bridge which we feel is involved in the same manner and that is the Richelieu Bridge. If you want us to assume jurisdiction over the other bridges, you've got to make it possible for us to assume in a clear-cut way the jurisdiction over that bridge." And after thinking it over we considered this was a reasonable attitude, and we looked for a method of doing this in such a way that we would not have to abolish the charter held by the Richelieu Bridge Company for some time and place this bridge under the provincial jurisdiction. This is how we came to this recommendation for the deletion of section 18, which according to the opinion by the Deputy Attorney General would seem to indicate that it will place this bridge from now on within the jurisdiction of the province.



The ACTING CHAIRMAN: The difference between the other six cases and this one is that this is a private company and the others were bridges built by the federal Government. In this case there are private interests involved. What is the situation with regard to those private interests? In a normal case a bill affecting a private company comes before Parliament from the private company, and not by way of a government amendment unless with the consent of the private company itself. Would you speak to that?

Mr. LALONDE: You have certainly touched on the one difficulty. That is one difference which creates in my opinion all the trouble. If the bridge had been federally owned there would have been no problem at all. As far as I am aware this is the only privately owned bridge operated on a charter given by the federal Government without being either interprovincial or international, and we certainly did not have any precedent on which to base a judgment or make a decision, and we were simply attempting, realizing that there were some very special features to this case, to find a solution that would not cancel the charter outright, and that would permit us to transfer the jurisdiction to where it should be.

Senator GELINAS: There were other private bridges in the Province of Quebec that were expropriated, but they were not operated under a federal charter.

Mr. LALONDE: This is the only one I can remember.

Senator GELINAS: Because there was the Belair Bridge, for example, and others that I can remember, but I don't know that they were operating under federal charter.

Mr. LALONDE: I am not aware of any others.

Senator KINLEY: Were there not two other bridges here, one below and one above this one?

Mr. LALONDE: No, Senator, there was only one bridge, and as I understand it the intent of the province is to build a public bridge next to this one. There is only one. It is simply between two small municipalities.

Senator DESCHATELETS: Can I ask a question of Mr. Martineau? I understand he is a witness on behalf of the provincial Government.

Hon. Paul Martineau, Counsel, Department of Justice, Province of Quebec: I am acting as counsel for the Province of Quebec.

Senator DESCHATELETS: It seems to me that the legal opinion we have on question No. 1 is the important one. If the province had not questioned the legal opinion given by the officials I do not think there would have been any problem. I would like to know from Mr. Martineau if he agrees with the legal opinion given as to the first question asked, that is that the province cannot now proceed with the building of a bridge.

Hon. Mr. MARTINEAU: Mr. Chairman, I would think, on behalf of the province, that we would like to agree, but I am afraid that we might be placed in a difficult situation later on if we accept the opinion this law does not place any prohibition whatever on the province, because there is jurisprudence, cases reported by the Supreme Court of Canada and others, to the effect that such a law applies to everyone, including a provincial government. So, this is the purpose I believe, of the proposed amendments to the law, and it is to make absolutely clear that the province will henceforth be fully empowered to exercise the jurisdiction that is normally given and erect a bridge at that place.

We are not here to oppose the bill. As a matter of fact, we welcome it, but we believe it does not go quite far enough.

Senator DESCHATELETS: In other words, Mr. Martineau, if I understood well, the province would like to be in a position in which it cannot be challenged?

Hon. Mr. MARTINEAU: That is right, sir.

The ACTING CHAIRMAN: May I follow that up by asking this question? Even if we take out section 18, section 12 will still be in the act?

Hon. Mr. MARTINEAU: That is right.

The ACTING CHAIRMAN: What do you say to that? Section 12 is a section that limits your building a bridge within three miles.

Hon. Mr. MARTINEAU: Section 12 does place a prohibition on any person or company, other than the incorporated company, constructing or maintaining a public thoroughfare across that river at that place, at a distance of three miles downstream and to the provincial border the other way.

This is one of the difficulties that the government of the Province of Quebec is facing at this time, and if an amendment to the act is to be made, we would suggest as well an amendment to section 12 of the act, to make it clear that the prohibition enacted there will no longer apply to the province.

There is dispute on this question; it is a controverted opinion. I respect the opinion that has been voiced, and it is certainly no doubt supported by authorities and jurisprudence, but the opposite view is also supported.

The ACTING CHAIRMAN: You are saying that, first of all, in the opinion of the Department of Justice you have the right to do it, but you are asking us nevertheless to go specifically against our own opinion and remove in some way that restriction. You ask for two amendments, one being that we give up our jurisdiction completely and that section 18 be withdrawn, but that we still proceed to amend section 12. It seems to me that is putting us in a completely impossible position.

Hon. Mr. MARTINEAU: We do not go against that opinion, but we say that if the purpose of the bill is to enable the province to build its own bridge across the river at that spot, why not make it perfectly clear and eliminate the possibility of suit or litigation or other difficulties with the company that is now charged with the operation of the bridge?

The ACTING CHAIRMAN: The only answer I can give you is that we think you have the power to do that now, but there are private interests affected who are not here before Parliament, even though they have been notified, and if we remove section 18 when we think you already have that power, what we are doing is something that is affecting these private interests, which we do not think we have to do. You have the power to build the bridge anyhow.

Hon. Mr. MARTINEAU: Section 18 says:

The bridge of the Richelieu Bridge Company, hereby incorporated, is declared to be a work for the general advantage of Canada.

This is, therefore, a derogation from the constitution which would normally place such works under the jurisdiction of the province. The way it can be derogated is by declaring it to be for the general advantage of Canada. This definitely gives the federal Government absolute jurisdiction in the matter.

If section 18 is deleted, then the province assumes its normal jurisdiction, but we are still faced with the prohibition established by section 12. There is a difference of opinion on this. Some say it does not apply to the province and some say it does. Would there be a disadvantage in declaring outright it does not?

Senator DESCHATELETS: There is no doubt here, as far as I am concerned, that the public interest is involved to a certain extent by having a new, modern bridge which can connect with the local highways in Quebec. It will serve better the interests of the people than this bridge; there is no doubt about that. But

since the public interest is involved, has the province given any thought to proceeding as usual with expropriation, as can surely be done?

The ACTING CHAIRMAN: Or even negotiations?

Senator DESCHATELETS: Yes, or negotiations?

Hon. Mr. MARTINEAU: As far as expropriation is concerned, I will refer to the opinion that has just been read on the question whether the Province of Quebec could expropriate the bridge, and I am of the view it could not, because that would destroy an undertaking of a federally-incorporated company. That is the view of the Department of Justice here; it is the opinion submitted to Public Works.

Senator DESCHATELETS: As far as negotiations are concerned, have there been any negotiations with the owners of the bridge, the Richelieu Bridge Company, up to now?

Hon. Mr. MARTINEAU: I do not know of any. There could have been some, but I have not examined the question from that point of view.

The ACTING CHAIRMAN: Mr. Lalonde, assuming the act remains in its present form—that is, that the bill is not passed—and the application comes along from the Province of Quebec under the Navigable Rivers Act, or whatever it is called now, where the Dominion has the jurisdiction for approval of the works, are you in any embarrassment in approving the plans and the work itself, providing they are satisfactory from that standpoint? If the bridge is within the three-mile limit, does it matter to you that the Richelieu Bridge Company has a prohibition in its act against that? Is the Government embarrassed by speaking in one act in one way and in another act allowing the prohibition to take place?

Mr. LALONDE: I can only give you a personal opinion, because the Department of Public Works, until about three months ago, was responsible for the administration of the Navigable Waters Protection Act. That responsibility now belongs to the Department of Transport. However, if I may give you a personal opinion, the only thing that the Department of Transport would consider, I think, is whether the plans for the bridge will interfere with navigation under the bridge; and as far as the other considerations involved in this are concerned, they would not even look at them.

The ACTING CHAIRMAN: In other words, it would be looked upon on its merits, regardless of section 12 of this bill?

Mr. LALONDE: That is right, sir.

Senator GELINAS: In connection with the negotiations, if negotiations were activated again and the two parties agreed, would not that settle the whole thing, or would it not, if the owners and the Government agreed on a price for expropriation? I understood Mr. Martineau to say the negotiations had started, but they had not been too active.

Hon. Mr. MARTINEAU: Mr. Chairman, I believe that even if there were an agreement between the private owners and the Province of Quebec, the Province of Quebec would still be in a position where it would appear to be openly flouting a public enactment. This is the reason why it is felt preferable to have the act as it stands now amended. The proposed amendment is perfectly in agreement with the views of the province, as far as it goes, because it does transfer jurisdiction of operating transportation across the bridge to the province; it takes it away from the federal Government. On the other hand, it does not provide for the relations with the present owners, and this is the thing that the Province of Quebec would like to have cleared up. The only way it can be cleared up, in our view, is by some express enactment in the amendment to the effect that Section 12 does not apply to the provincial government or, in this case, to the Province of Quebec.



The ACTING CHAIRMAN: Would you not agree, Mr. Martineau, that if we do this we are affecting private rights—the rights of the owners of this bridge?

Hon. Mr. MARTINEAU: Not completely, Mr. Chairman, because it has been submitted by the Department of Justice—well, yes, it would in that way, but there would still have to be expropriation. You would definitely affect private rights, except if it is expressly mentioned that the prohibition does not apply, and in that case you are not affecting private interests. Of course, it does not apply to the provincial government. Even in reading the terms of Section 12 it is not quite clear whether it does or not, because Section 12 reads:

After the said bridge is open to the public, and while it remains fit for traffic, no person or company—

Well, the word “government” does not appear, but it could be construed as being included in “person”.

—other than the Company hereby incorporated, shall construct or cause to be constructed any bridge or bridges, or shall use as a ferry any boat, scow or vessel of any kind, for the purpose of conveying any person, animal or vehicle whatsoever, for hire or reward, across the said river—

Well, the province of Quebec would not operate the bridge for hire or reward, so it could be construed—and this is one reasonable construction of that section—that it does not apply to the Province of Quebec as such provided it does not intend to construct a toll bridge. If it is a toll bridge then this very likely would apply. If it is not a toll bridge then it would not apply. But, there is an ambiguity in that section, and I respectfully submit that if there is a possibility of eliminating that ambiguity, well, why not do it when an amendment to the act is being considered.

The ACTING CHAIRMAN: Mr. Lalonde, could I put this question, which I think follows from what you said earlier, to you directly: Do you and your departmental officials consider that this work is no longer a work for the general advantage of Canada?

Mr. LALONDE: Yes, Mr. Chairman. This is definitely a bridge which serves the local population only. It has no relationship to the Trans-Canada Highway at all, and as a matter of fact, if it were not for the fact that that charter was granted so many years ago, this is the type of bridge which we would not dream of building now within a province at any time.

The ACTING CHAIRMAN: May I ask Mr. Martineau a question? If we act on the opinion of the Department of Justice that the Province of Quebec has the right to build a bridge notwithstanding this act, and, therefore, the act is not necessary, have you anything to say as to whether in that case, if we do not pass the bill, the province will still wish to go ahead and proceed on the basis that it has the power, because we have come to that conclusion here?

Hon. Mr. MARTINEAU: No doubt it would want to proceed, but as was stated before, Mr. Chairman, the private interests that are involved here are not represented, and it could involve the province in a conflict with those private interests. This is the reason why we feel the way we do, especially in view of the answer of the Deputy Minister a few minutes ago to the effect that this bridge is no longer in the general or national interest of Canada. We feel that that amendment should be proceeded with either as it is, or by making it more explicit still by amending as well Section 12.

The ACTING CHAIRMAN: If the Province of Quebec were not involved, and the Dominion of Canada felt that this was no longer a work for the general advantage of Canada and was dealing with private interests who had constructed the bridge, I think the Dominion of Canada would feel that it had to protect in some way the private interests which had gone ahead and built the bridge while it was a work for the general advantage of Canada.



Senator DESCHATELETS: This is a vital point.

The ACTING CHAIRMAN: Yes.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, it seems to me that it should not matter to us whether the period over which this bridge has operated under the designation of its being a work for the general advantage of Canada is 85 years or 5 years. The intention of a government at any time to take something away from somebody that was given 5 years ago may seem more important to us than taking away something that was given 85 years ago, but, speaking as a layman, it seems to me that these private interests should still be assured of that right notwithstanding the fact that 85 years have passed and circumstances have changed. My own view, as a layman, is that we should proceed very carefully in respect to taking away that right without having some indication from those private interests that they are quite willing for this to be done because there is no profit in it, or whatever their reason might be. As I recall the evidence we heard the last time the bill was before the committee, there was no indication from the company for or against the action proposed in this bill.

The ACTING CHAIRMAN: Perhaps we should ask Mr. Batt or Mr. Jackson, the officials of the committee, to explain to us what the situation is with respect to representations from representatives of the company.

The CLERK OF THE COMMITTEE: The company replied that they did not want to appear before the committee at that time, but that they did oppose the bill.

The ACTING CHAIRMAN: Have you been in touch with them with respect to this particular meeting?

The CLERK OF THE COMMITTEE: Yes. I was speaking to Mr. Stein himself.

The ACTING CHAIRMAN: What was his attitude?

The CLERK OF THE COMMITTEE: It was still my impression that they did not want to be represented. I have a letter signed by him in which he states he does not wish to appear.

The ACTING CHAIRMAN: But that refers to the previous meeting?

The CLERK OF THE COMMITTEE: Yes.

Senator SMITH (*Queens-Shelburne*): Who is Mr. Stein?

The CLERK OF THE COMMITTEE: The counsel for the company.

Senator DESCHATELETS: I might say that I received a letter on December 28 from Mr. Stein. This letter is written in French, and I think I can summarize it by saying that they are opposed to this legislation and that they would not like the members of the committee to feel that because they are not attending the meeting of the committee that this is through negligence of some kind. Since this question involves two governments they feel that they should state their opposition, and remain away from the hearing. This is the only explanation I have as to why they are not present here.

The ACTING CHAIRMAN: Are there any further questions?

Senator KINLEY: Who owns the present bridge over the river? Is it the same company? I understand that they are building a modern bridge—

The ACTING CHAIRMAN: No, no.

Mr. LALONDE: The Richelieu Bridge Company owns the present bridge, which is a toll bridge. That is the only bridge in that area at the moment. As I understand it, the Province of Quebec wishes to build a modern bridge next to it to be operated without tolls.

Senator KINLEY: And the same company which is proposing this bill owns the old bridge?

The ACTING CHAIRMAN: No.

Mr. Batt, Assistant Law Clerk and Parliamentary Counsel: My impression, gained from a letter received from Mr. Stein, is that the company that owns the bridge is Richelieu Bridge Company (1959) Limited.

Mr. LALONDE: They got a renewal?

Hon. Mr. MARTINEAU: They are the assignees of the original company which received the charter from the Canadian Government.

Senator KINLEY: When this was before the committee when Senator Hugessen was the chairman we heard evidence from different people. Have we not a transcript of what was said at that meeting?

The ACTING CHAIRMAN: Yes, here is a copy of the evidence.

Senator KINLEY: You have the evidence?

The ACTING CHAIRMAN: Yes, the proceedings of December 14.

Senator DESCHATELETS: Do you know, Mr. Martineau, how many shareholders there are of this company?

Hon. Mr. MARTINEAU: No, I do not know, sir.

Senator GELINAS: Mr. Chairman, it has been said that the company objects to this bill, but on what grounds do they object? Have they stated those grounds?

The ACTING CHAIRMAN: I am sorry, Senator Gelin. Were you asking me a question?

Senator GELINAS: Yes, at the meeting on December 14 the company objected. May I ask: On what grounds did they object?

The ACTING CHAIRMAN: There is a letter dated December 13, 1966 which perhaps I should read into the record. It is from the firm of Letourneau, Stein, Marseille, Bienvenue, Delisle & Larue, Barristers and Solicitors, of Quebec City. It is addressed to Mr. Frank A. Jackson, Clerk of the Transport and Communications Committee, and reads as follows:

Re: Bill No. S-44, An Act to amend an Act to Incorporate the Richelieu Bridge Co.—our file No. 64,207.

Dear Mr. Jackson:

We thank you for your letter of the 9th instant, received this morning, and your telegram of yesterday, the latter advising us that the committee's hearing on the above noted bill has been re-scheduled for tomorrow, Wednesday, the 1th instant.

As we wrote yesterday to the Chairman of the committee, Senator Hugessen, our client, Richelieu Bridges (1959) Limited has decided not to be represented at the hearing, though it still opposes the bill.

I am not familiar myself with Richelieu Bridges (1959) Limited, but I am told by Mr. Batt, our Assistant Law Clerk, that it is a provincial company; and I may just be guessing, but I infer that it may be a shareholder of the federal company. However, it is signed by Charles Stein, on behalf of the firm of solicitors.

Senator HOLLETT: Did I understand Mr. Martineau to say that the federal Government could be construed as being a person under section 12?

Hon. Mr. MARTINEAU: Mr. Chairman, I was referring to the provincial government and stating that under the generic term "person" mentioned in section 12, the provincial government could be included.

Senator HOLLETT: Do you think that is possible?

Hon. Mr. MARTINEAU: Well, there is jurisprudence to that effect.

Senator HOLLETT: If that were so, I think this could easily be stalled.

Hon. Mr. MARTINEAU: Yes, I am of opinion that is so, Mr. Chairman, but since opinion is divided on that question this is the reason why if there were an

explicit statement or amendment to section 12 which would exclude the provincial government, then there would be no difficulty at all, I think.

The ACTING CHAIRMAN: The opinion of our Department of Justice is that section 12 does not apply to the Province of Quebec but to the Crown in the right of the Province of Quebec.

Senator HOLLETT: How does section 12 read, Mr. Chairman?

The ACTING CHAIRMAN: It is a long section, but I will read it in part:

After the said bridge is open to the public, and while it remains fit for traffic, no person or company, other than the Company hereby incorporated....

Which is the Richelieu Bridge Company—

... shall construct or cause to be constructed any bridge or bridges, or shall use as ferry any boat, scow or vessel of any kind, for the purpose of conveying any person, animal or vehicle whatsoever, for hire or reward, across the said river, for a distance of three miles on the north of the said bridge and to the Province line on the south of the same;

Now, the opinion of the Department of Justice is that this act does not prohibit the government of the Province of Quebec from erecting a new bridge across that part of the Richelieu River which commences "three miles on the north of the said bridge and to the Province line on the south of the same". In other words, within that area the Province of Quebec is not restricted.

Senator HOLLETT: They could build a bridge?

Hon. Mr. MARTINEAU: Yes.

The ACTING CHAIRMAN: They can build a bridge, it is not prohibited.

Senator ASELTINE: I cannot agree with that; it sounds unreasonable to me.

The ACTING CHAIRMAN: This is on the basis that no act of Parliament binds the Crown unless it is so stipulated.

Senator HOLLETT: But is it not a fact that this bridge we are now discussing is no longer fit for public use, looking at it from the point of view of today compared with when it was introduced? Would you not say it was no longer fit?

Hon. Mr. MARTINEAU: If I may answer, Mr. Chairman: Following the interviews I have had with provincial authorities they are definitely of that opinion—the bridge is antiquated, inadequate, dangerous, and does not meet modern needs; and so I think there is no difficulty on that point at all.

Senator DESCHATELETS: I wonder if I may ask a question relating to the question which was posed by Senator Gelinas, namely: Why does the company object to this? Well, I had some conversations with Mr. Stein, and also with the president of the Richelieu Bridge Company, and their fears are very simple. They feel that if we oppose this legislation the first thing that will happen is that the Province of Quebec will come and build another bridge within three or four hundred feet of the present bridge and that there will be no compensation.

Senator GELINAS: That is why I directed a question at first, why have not negotiations been activated and settled on a price. The two bodies must agree on the price.

Hon. Mr. MARTINEAU: Here we are faced again with the opinion of the federal Department of Justice that the province cannot expropriate it because it is a federally incorporated company and it would have affected the structure of that company.

Senator GELINAS: But, Mr. Martineau, if the Richelieu Bridge Company in 1959 wished to cancel, before doing that they would want to know what they are getting out of this on the expropriation, I would think.



The ACTING CHAIRMAN: And indirectly we are doing something definitely to their disadvantage, I would think, if we passed this bill.

Senator HOLLETT: I did not hear that, Mr. Chairman.

The ACTING CHAIRMAN: We would be doing something definitely to the disadvantage of the company as a private interest if we passed this bill.

Are there any further questions of the witnesses? Do they wish to say anything further?

Mr. LALONDE: Mr. Chairman, I am not sure whether we explained our position well enough in the light of the questions asked. When we began to discuss this with the province we took, rightly or wrongly, the attitude that this is not the kind of a responsibility which is carried now by the federal Government. The only responsibility we admit with respect to roads and ferries is one connected with the Trans-Canada Highway. So we said to ourselves, we do not care whether this bridge is antiquated or not, because it is not our responsibility to provide that kind of transportation within the Province of Quebec; but we are concerned if we as a federal department are preventing the province from carrying out their own responsibilities, and therefore how can we take out the legal block that we have put in to prevent the province from carrying their responsibility. This is all we have attempted to do in this bill; it is to make it possible for them to take some action, because we feel it is their responsibility, not that of the federal authority.

The ACTING CHAIRMAN: But the legal opinion clears you.

Mr. LALONDE: Well, we have to go by the legal opinion, of course.

The ACTING CHAIRMAN: But the same thing might be true of a bridge built not five years ago but say ten years ago under a similar clause, but which now you would feel was no longer your responsibility; but in that case I would think that if private interest was involved, you would want to be sure the private interest was having whatever rights it had, protected.

Mr. LALONDE: We did not consider this was our departmental responsibility.

Senator SMITH (*Queens-Shelburne*): I cannot see up to this point, Mr. Chairman, how we could recommend taking away that right unless we had some kind of assurance that the private interest was going to be recognized by the other party involved, in this case, the government of the Province of Quebec. We do not even know how far such negotiations might have gone on; we know they have not been fruitful, apparently, and I do not see how we can take away that right without having some assurance in some form or another that the taking away of the right is going to be compensated for.

The ACTING CHAIRMAN: May I make a suggestion? Perhaps we might adjourn again, even though it appears that we are taking some time on this bill. However, it would be better to take time rather than to do something that might be wrong either way. Therefore, I suggest that we have the proceedings of this meeting printed as quickly as we can get them, making sure they are sent to the people concerned, and adjourning now to the call of the chair. In the meantime, perhaps we shall be able to see if any further progress can be made in resolving the matter so that we feel that our doubts could be removed. Do honourable senators agree to my suggestion?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Then the meeting is adjourned, to resume at the call of the chair. In the meantime, the proceedings will be printed as quickly as possible, sent to the government of the Province of Quebec, the company, and all concerned, and requests will be made for any further comments when we meet again, when representations will be made. Is that agreed?

Hon. SENATORS: Agreed.

The committee adjourned at the call of the chair.





Second Session—Twenty-seventh Parliament

1967

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable T. D'ARCY LEONARD, *Chairman*

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No. 1

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*Complete Proceedings on Bill S-16*

intituled:

"An Act to incorporate Cabri Pipe Lines Ltd."

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THURSDAY, JUNE 29th, 1967

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WITNESSES:

*Cabri Pipe Lines Ltd.*: E. J. Houston, Q.C., Parliamentary Agent; A. J. Cressey, Counsel; S. A. Milner, provisional director.

*Province of Alberta*: J. J. Frawley, Q.C., Counsel.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable T. D'Arcy Leonard, *Chairman*

The Honourable Senators

Aird,	Lefrançois,
Aseltine,	Leonard,
Baird,	Macdonald ( <i>Brantford</i> ),
Beaubien ( <i>Provencher</i> ),	McCutcheon,
Bourget,	McDonald,
Burchill,	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	Méthot,
Davey,	Molson,
Desruisseaux,	Paterson,
Dessureault,	Pearson,
Farris,	Phillips,
Fournier ( <i>Madawaska-Restigouche</i> ),	Power,
Gélinas,	Quart,
Gershaw,	Rattenbury,
Gouin,	Reid,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thorvaldson,
Hollett,	Vien,
Isnor,	Welch,
Kinley,	Willis—(45).
Lang,	

*Ex officio members:* Brooks and Connolly (*Ottawa West*)

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 13th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Prowse moved, seconded by the Honourable Senator Bourque, that the Bill S-16, intituled: "An Act to incorporate Cabri Pipe Lines Ltd.", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Prowse moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, June 29th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill S-16, intituled: "An Act to incorporate Cabri Pipe Lines Ltd.", has in obedience to the order of reference of June 13th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*



## MINUTES OF PROCEEDINGS

THURSDAY, June 29th, 1967.  
(1)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

*Present:* The Honourable Senators Leonard (*Chairman*), Burchill, Croll, Fournier (*Madawaska-Restigouche*), Gershaw, Gouin, Hollett, Isnor, Kinley, Lefrançois, McDonald, McElman, Molson, Pearson, Quart, Rattenbury, Smith (*Queens-Shelburne*) and Welch. (18)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-16.

Bill S-16, "An Act to incorporate Cabri Pipe Lines Ltd.", was read and considered.

The following witnesses were heard:

CABRI PIPE LINES LTD.:

E. J. Houston, Q.C., Parliamentary Agent.

A. J. Cressey, Counsel.

S. A. Milner, provisional director.

PROVINCE OF ALBERTA:

J. J. Frawley, Q.C., Counsel.

On motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 9.50 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,  
*Clerk of the Committee.*



## THE SENATE

### STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Thursday, June 29, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill S-16, to incorporate Cabri Pipe Lines Ltd., met this day at 9.30 a.m. to give consideration to the bill.

**Senator T. D'Arcy Leonard** in the Chair.

**The Chairman:** Honourable senators, we have before us for consideration Bill S-16 and Bill S-17 that have been referred to us by the Senate. I think we should consider these bills in their numerical order, so we shall commence with Bill S-16, to incorporate Cabri Pipe Lines Ltd.

I have before me a letter from the Law Clerk of the Senate, Mr. Hopkins, stating that in his opinion this bill is in proper legal form.

May I have the usual motion with respect to the reporting and the printing of the proceedings in French and English of the committee?

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The Committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The sponsor of this bill is Senator Prowse, and I will ask him to introduce his witnesses at this stage.

**Senator Prowse:** Mr. Chairman, honourable senators: I would like to introduce Mr. E. J. Houston, Q.C., Solicitor for the company, here in Ottawa, who has acted as their agent; and Mr. A. J. Cressey one of the principals of the company, who will be ready to answer any questions and explain the application to you.

**E. J. Houston, Q.C., Parliamentary Agent, Cabri Pipe Lines Limited:** Mr. Chairman, honourable senators: Cabri Pipe Lines Lim-

ited is represented here today by Mr. Cressey, who is a lawyer in the Province of Alberta and is most experienced in this field. After you have heard from him, if you wish to hear any further evidence, Mr. Stanley A. Milner, manager and director of Cabri Pipe Lines Limited, and, as Mr. Cressey will tell you, president of other corporations, is here, and he is also highly experienced in this field. It is my pleasure to introduce you to Mr. Cressey who will give you a brief outline and answer any questions you may wish to put to him.

Senator Prowse has asked that I should bring to your attention that there have been a couple of small changes; they are noted in ink in the draft bill. They are there in order to comply with certain legislation of Parliament.

**Mr. Hopkins:** My understanding is that all agreed changes to an earlier draft have now been incorporated in the bill, so you can forget about any changes made in ink. The bill before you is in final form.

**The Chairman:** Then let us hear from Mr. Cressey and if any questions arise as to any or all amendments, we can deal with them as they arise.

**A. J. Cressey, Counsel for Cabri Pipe Lines Limited:** Mr. Chairman and honourable senators, the changes mentioned were those brought about wherein the original draft of the bill was changed to comply with the recent Canada Corporations Act; they are changes in sections, that is all.

The incorporators, Cabri Pipe Lines Limited, are seeking a charter for a special act company with a right to construct interprovincial and international pipe lines for the transportation of natural gas, or oil, liquefied petroleum and other products.

There are some pertinent facts regarding the incorporators and their plans. Cabri will construct an interprovincial pipe line for transmitting natural gas from one or more

source wells in the Province of Saskatchewan to gas storage facilities in the Province of Alberta.

**Senator Isnor:** What is the distance from the source of supply to storage?

**Mr. Cressey:** I have with me a diagram of the proposed route here.

**The Chairman:** Is it agreed that this diagram be tabled?

**Hon. Senators:** Agreed.

**Mr. Cressey:** The distance of the initial well shown there is approximately 16 miles.

The incorporators are all prominent businessmen in Alberta, and among them are people experienced in oil and gas exploration and the transportation of these products.

The manager and director of Cabri Pipe Lines Limited will be Stanley A. Milner, of the City of Edmonton, who is president of Chieftain Development Company Limited, Blue Crown Petroleum Limited, and the Lloydminster Gas Company Limited. Mr. Milner and his associates are actively engaged in several other enterprises in Alberta and elsewhere.

**Senator Pearson:** Are these all provincial companies?

**Mr. Cressey:** All provincial companies, yes. Mr. Milner and his associates are actively engaged in both production and marketing of natural gas and other petroleum products.

Included in the general objects of the company is the right to construct and operate transportation and communication facilities which might be required for the operation of their systems on an interprovincial basis. These are communication facilities from station to station in the operation of their facilities.

**Senator Pearson:** Has the oil well, which is located at the end of the line to be constructed, already expired?

**Mr. Cressey:** Yes, the well has already expired.

**Senator Pearson:** What is the actual location there; what is the name of the town?

**Mr. Cressey:** Actually it is northwest of Lloydminster. There is a grain elevator there, but I cannot tell you any more. The nearest town is Lloydminster.

As solicitor for the applicants I caused the necessary applications to be advertised in the following publications:

(a) *Lloydminster Times*, Lloydminster, Saskatchewan; (b) *News-Optimist*, North Battleford, Saskatchewan; (c) *Journal*, Edmonton, Alberta, (d) *Leader-Post*, Regina, Saskatchewan, (e) *Canada Gazette*, Ottawa.

All areas directly interested in the location of the line were thus covered. There were no objections to the incorporation of the pipe line company filed at my office by anyone.

**Senator Isnor:** When did you advertise?

**Mr. Cressey:** Roughly three or four months ago. The applicants have conducted their initial feasibility studies and are satisfied that this is an economical venture. The applicants are capable of providing all the necessary engineering and technological personnel for design and construction of the contemplated facilities.

The financing and construction of Cabri are within the capacity of the existing companies, and it is contemplated that a public financing will not be necessary. There is no agreement, undertaking, understanding, nor any intention by the applicants to transfer stock of this company to other than Canadians. They are all Canadian citizens.

**Senator Kinley:** It is only to connect up the supply system?

**Mr. Cressey:** That is right.

**Senator Kinley:** It does not alter anything for the people who are using it at all?

**Mr. Cressey:** No.

**The Chairman:** Senator Molson?

**Senator Molson:** May I ask what is the order of magnitude of the capital expenditures contemplated in the initial project shown?

**Mr. Cressey:** The initial project would cost about \$23,000 per diameter inch in that area. It would be somewhere around \$15,000 a mile. The distance would vary in the initial phase but around \$14,000, \$16,000.

**Senator Molson:** That is something under \$300,000 in that initial stage.

**Mr. Cressey:** Right.



**Senator Molson:** With all the facilities that are necessary, other than a pipe?

**Mr. Cressey:** Right.

**The Chairman:** Who owns the source well.

**Mr. Cressey:** The source well is presently controlled by the Lloydminster Gas Company.

**The Chairman:** And the storage well?

**Mr. Cressey:** I would have to call on Mr. Milner for that. There is an agreement whereby they can acquire the source well.

**Mr. S. A. Milner, President, Lloydminster Gas Company:** They are both controlled by the Lloydminster Gas Company.

**The Chairman:** Does the bill generally follow the phraseology of previous pipe line bills?

**Mr. Cressey:** It is identical to predecessor bills passed through the Senate and the House.

**Senator Fournier (Madawaska-Restigouche):** From your gas source well where does it go?

**Mr. Milner:** From the source well?

**Senator Fournier (Madawaska-Restigouche):** No, from your storage well. Where does it go from there?

**Mr. Cressey:** From the storage well during the winter months production would continue to come from the source well, but from the storage well you would have production as well, thus supplying into the system. This enables you to balance rather than having a peak valley type of supply whereby you must purchase outside gas to offset the high consumption during the winter months. It is possible here to produce at a high rate from the source well during the summer even though the demand for gas in and about the Lloydminster area is low. The excess will be pumped into the storage well and during the winter months they will produce from the storage well and balance their load from the source well.

**Senator Burchill:** Where does it go after the source well?

**Mr. Cressey:** Lloydminster.

**Senator Kinley:** Have you a right-of-way?

**Mr. Cressey:** No, no right-of-way has been taken.

**Senator Kinley:** You will have to buy the right-of way?

**Mr. Cressey:** Right.

**Senator Kinley:** Through cultivated land?

**Mr. Cressey:** Yes.

**Senator Kinley:** Not cities or towns?

**Mr. Cressey:** No, sir.

**Senator Burchill:** Is there any law that gives any right-of-way?

**Mr. Cressey:** No. Should the pipe line company have the charter approved, the company will then proceed to the National Energy Board with their application, and the National Energy Board will decide on the economics and feasibility of the project. Their permission must be acquired before it can be proceeded with.

**Senator Burchill:** Is there any connection between these two bills, S-16 and S-17?

**Mr. Cressey:** No.

**The Chairman:** Mr. Frawley, counsel for the Province of Alberta, is here. I do not know if he has anything to say. He may be here just as an observer, but as a matter of courtesy I would ask if Mr. Frawley wants to say anything.

**Mr. J. J. Frawley, Counsel, Province of Alberta:** I had a conversation yesterday with the Deputy Minister of Mines and Minerals in Edmonton. He knows about this bill, and as a matter of fact said it was a very good thing. About the only reason these people are here is that you cannot go across provincial boundaries without applying for this legislation. Otherwise, it would be entirely a matter of provincial legislation.

**The Chairman:** Are there any other questions?

Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

The Committee proceeded to the next order of business.





















Second Session—Twenty-seventh Parliament  
1967

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE**  
**ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable T. D'ARCY LEONARD, *Chairman*

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No. 2

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*Complete Proceedings on Bill S-17,*

intituled:

"An Act to incorporate Vawn Pipe Lines Ltd."

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THURSDAY, JUNE 29th, 1967

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WITNESSES:

*Vawn Pipe Lines Ltd.*: E. J. Houston, Q.C., Parliamentary Agent; D. G. Ingram, provisional director; R. S. Matheson, Counsel.

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REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967



THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable T. D'Arcy Leonard, *Chairman*

The Honourable Senators

Aird,  
Aseltine,  
Baird,  
Beaubien (*Provencher*),  
Bourget,  
Burchill,  
Connolly (*Halifax North*),  
Croll,  
Davey,  
Desruisseaux,  
Dessureault,  
Farris,  
Fournier (*Madawaska-  
Restigouche*),  
Gélinas,  
Gershaw,  
Gouin,  
Haig,  
Hayden,  
Hays,  
Hollet,  
Isnor,  
Kinley,

Lang,  
Lefrançois,  
Leonard,  
Macdonald (*Brantford*),  
McCutcheon,  
McDonald,  
McElman,  
McGrand,  
Méthot,  
Molson,  
Paterson,  
Pearson,  
Phillips,  
Power,  
Quart,  
Rattenbury,  
Reid,  
Roebuck,  
Smith (*Queens-Shelburne*),  
Thorvaldson,  
Vien,  
Welch,  
Willis—(45).

*Ex officio members:* Brooks and Connolly (*Ottawa West*)

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 13th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Prowse moved, seconded by the Honourable Senator Bourque, that the Bill S-17, intituled: 'An Act to incorporate Vawn Pipe Lines Ltd.', be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Prowse moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, June 29th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill S-17, intituled: "An Act to incorporate Vawn Pipe Lines Ltd.", has in obedience to the order of reference of June 13th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted,

T. D'ARCY LEONARD,  
Chairman.



## MINUTES OF PROCEEDINGS

THURSDAY, June 29th, 1967.  
(2)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

*Present:* The Honourable Senators Leonard (*Chairman*), Burchill, Croll, Fournier (*Madawaska-Restigouche*), Gershaw, Gouin, Hollett, Isnor, Kinley, Lefrancois, McDonald, McElman, Molson, Pearson, Quart, Rattenbury, Smith (*Queens-Shelburne*) and Welch.—(18)

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-17.

Bill S-17, "An Act to incorporate Vawn Pipe Lines Ltd.", was read and considered.

The following witnesses were heard:

VAWN PIPE LINES LTD.:

E. J. Houston, Q.C., Parliamentary Agent.

D. G. Ingram, provisional director.

R. S. Matheson, Counsel.

PROVINCE OF ALBERTA:

J. J. Frawley, Q.C., Counsel.

On Motion of the Honourable Senator Burchill it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

*Attest.*

Frank A. Jackson,  
*Clerk of the Committee.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Thursday, June 29, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill S-17, to incorporate Vawn Pipe Lines Ltd., met this day at 9.50 a.m. to give consideration to the bill.

**Senator T. D'Arcy Leonard** in the Chair.

**The Chairman:** Honourable senators, we have before us for consideration now Bill S-17, Vawn Pipe Lines Ltd. May I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

I have the opinion of Mr. Hopkins, Parliamentary Counsel, that the bill is in proper legal form. Senator Prowse was the sponsor. Would you like to introduce the witnesses, senator?

**Senator Prowse:** Mr. Houston, parliamentary agent for the applicants, is here.

**The Chairman:** Mr. Houston, perhaps you would say who is with you.

**Mr. E. J. Houston, Q.C., Parliamentary Agent:** Mr. Chairman, honourable senators, although this bill has no connection with what Mr. Cressey told you, it is in similar form to the bill you have just heard about. We have here as a witness Mr. R. S. Matheson, if you wish to hear him, and after Mr. Matheson has addressed you we have the manager and director of Vawn Pipe Lines, Mr. Donald E. Ingram, a corporation lawyer from the City of Edmonton. Mr. Matheson, who is a Queen's Counsel, is very experienced

in this field; he is from the Province of Alberta and he will, as Mr. Cressey did with the last bill, give an outline of the objects of the company. He also has some maps which he can distribute to you, indicating the area covered by the proposed bill. If you have any questions I am sure he could answer them.

**The Chairman:** Mr. Matheson has a map. Is it agreed that that map shall be distributed?

**Hon. Senators:** Agreed.

**Mr. R. S. Matheson, Counsel, Vawn Pipe Lines Ltd.:** Mr. Chairman and honourable senators, this bill seeks the incorporation of a special act company with a right to construct interprovincial and international pipe lines for the transportation of natural gas, oil, liquefied petroleum and other products. The Vawn Pipe Lines Company requires this charter so that we can evaluate the area in northwestern Alberta and the northern Peace River block generally, with the idea that we can build our pipe line to the nearest economic market facilities.

In the light of the recent Rainbow discoveries, all of which go to the western Alberta boundary, and in the light of the fact that there are pipe line facilities in British Columbia, and because oil and gas reservoirs do not respect boundaries, it is quite likely that it will be necessary to market the petroleum products which might be produced in Alberta through B.C. pipe lines.

The incorporators seeking this petition are Alberta men entirely, businessmen in the City of Edmonton. They are all involved in one way or another and are part of the oil and gas industry in Edmonton. There is no arrangement of any kind with this company that any of its shares or otherwise be transferred to persons outside the Edmonton group, the associated companies with which these people are working, all of which, again, are Alberta companies.

As pointed out to the meeting, Mr. Ingram is, initially, the manager and is also director of Vawn Pipe Lines. He is a lawyer. The firm with which he is associated has been handling oil and gas business for some years, and we are acting in that capacity.

The charter is being asked for on a rather broad basis in view of the fact that the development of this area is still in its initial stages. There are many fields which have been found, but there will be many more fields found. You will note from the map which I have distributed that on the reservation on which there will be development work, exploration work will be taking place immediately. It goes directly to the border of the province. The termination of that line is in the field in British Columbia, which is now tied into existing pipe line facilities.

**Senator Isnor:** How far east does that go from the borderline of British Columbia?

**Mr. Matheson:** At the moment, where they are presently contemplating the well, it is about seven miles east of the border, and then it will have to go about seven or eight miles into British Columbia to connect up with a marketing pipe line in that province. So it is approximately 17 to 18 miles of pipe line that will be necessary, without taking into consideration field lines.

**Senator Isnor:** In other words, the supply is in Alberta but the distributing station will be in British Columbia. Is that correct?

**Mr. Matheson:** The only pipe line facility which goes to market is now in British Columbia. The only one which would make it economically feasible at this stage to market the gas or oil located on this reservation would be in British Columbia.

**Senator Pearson:** How far away is the Rainbow Pipe Line?

**Mr. Matheson:** This particular reservation would be approximately 120 miles south of Rainbow, the actual Rainbow field.

**Senator Pearson:** I am talking about the Rainbow Pipe Line.

**Mr. Matheson:** Oh! That would be east of this line and would be 100 miles east of this particular reservation.

**Senator Gershaw:** What is the significance of the section being coloured on this map?

**Mr. Matheson:** Just so that it will be more easily seen. This is a reservation owned by the associated company with whom we are dealing at this time. They are the people who should be doing the exploration drilling this season. That is a petroleum and natural gas company.

**Senator Croll:** What is the name of that company?

**Mr. Matheson:** It is the Chieftain Development Company Limited.

**Senator Croll:** There is just the one company?

**Mr. Matheson:** It is owned jointly by them and by Blue Crown Petroleum Company Limited. Each company has a 50 per cent interest. They are both Alberta companies.

**Senator Croll:** There is no relation there to the Scurry Rainbow?

**Mr. Matheson:** No, none whatever.

**Senator Croll:** How far away from them are you?

**Mr. Matheson:** How far away from Scurry Rainbow? I have no idea if they have any reservations in this particular area or not, sir.

**Senator Kinley:** What is the significance of the name Vawn Pipe Lines? Is that a man's name?

**Mr. Matheson:** No. The only significance is the absolute necessity of having a name which does not conflict with the name of some other company, because that might cause problems in the future, when we are actually going into construction.

**Senator Kinley:** But what does "Vawn" mean?

**Mr. Matheson:** It is a town in Saskatchewan that we are quite sure will not have any pipe line named after it.

**Senator Molson:** The westernmost point shown on this sketch, then, is in range of the distribution pipe lines of British Columbia. Is this correct?

**Mr. Matheson:** Yes. There is a pipe line right to that point at the moment. There is a producing gas field at that point, and there is a pipe line which ties into the westcoast transmission pipe lines to that point.



**Senator Molson:** Whose pipe lines would those be?

**Mr. Matheson:** The Westcoast Gas Transmission.

**The Chairman:** Would you like to go ahead now?

**Mr. Matheson:** As this is a facility which crosses the Alberta-British Columbia boundary, of course we must seek a charter through a special act company. The advertising for this company was placed some seven or eight months ago very widely in Prince George, the *Vancouver Sun*, the *Peace River Block News*, the *Record-Gazette* of Peace River, the *Edmonton Journal* and the *Canada Gazette*, and there have been no representations made to our office regarding this, other than from our Department of Mines and Minerals in Alberta, and they simply required to know what we were doing and we satisfied them. I believe Mr. Frawley again has dealt with our Deputy Minister of Mines and Minerals.

This pipe line, as contemplated, does not duplicate any existing pipe line facilities as shown on that map, and it is required in order to market from that particular location.

**Senator Molson:** What is the contemplated capital cost of the project as we have it here?

**Mr. Matheson:** About \$120,000 would construct this particular pipe line as presented. It is pretty wild country, but not much right of way would be on developed land, I believe. So \$120,000 would be about the cost.

**Senator Isnor:** What is the distance involved?

**Mr. Matheson:** About 15 to 17 miles.

**Senator Molson:** That is a better price than that quoted by the company which preceded you in this committee hearing.

**Mr. Matheson:** I beg your pardon?

**Senator Molson:** You seem to have a better price of construction.

**Mr. Matheson:** It amounts to about the same on six-inch pipe. I don't know what the size of the pipe was in the other one.

**Senator Molson:** Six inches.

**Senator Burchill:** Has an oil well been established in that district?

**Mr. Matheson:** Not on this particular reservation at the moment. This is a very good geological area and we are very optimistic. This whole area of the Peace River block has produced a lot of gas and oil and, of course, we are into the southern portion of the Rainbow geological trend so that, in fact, we are satisfied that all through this area petroleum and natural gas will be discovered.

**Senator Burchill:** You contemplate going to work there at once.

**Mr. Matheson:** No, not on this pipe line at once. The drilling will certainly go ahead long before the pipe line, and it is contemplated that seismic and drilling activity will be going ahead very shortly.

**Senator Burchill:** You contemplate going ahead with the drilling?

**Mr. Matheson:** Yes.

**Senator Fournier (Madawaska-Restigouche):** What is the scale on the map?

**Mr. Matheson:** The small squares are one mile. As I pointed out, the cost would be about \$115,000 to \$120,000. This is well within the capacity of the people who are interested in this corporation. In very general terms, we must have a company before we can proceed with all of the necessary engineering evaluations, et cetera, and we also are well aware of the fact that we must apply to the National Energy Board before we actually do commence any construction or even undertake the first phase of construction.

**Senator Molson:** Is this area deep-well country?

**Mr. Matheson:** Yes. This would be quite deep-well country. You are not right into the very deep foothills, but you are into the 7,000-foot to 8,000-foot wells.

**Senator Hollett:** How many people would be employed in the construction of these?

**Mr. Matheson:** On a pipe line of this size, your construction crew would probably amount to about 40 to 50 people on the actual construction site.

**Senator Croll:** Let us assume for a moment that someone was looking at this map. I think this is south.

**Mr. Matheson:** I will just have to look at my map—T80.

**Senator Croll:** If somebody else finds a considerable amount of oil or gas immediately there and then they come before us and want to build a pipe line, are they not faced with the situation that you have already got a pipe line there and so they may be precluded while you may take four, five, six, seven or ten years to build?

**Mr. Matheson:** I don't believe so. I think the development of the whole area would be going along simultaneously, and if there are reserves discovered by anybody, we would be co-operating with any kind of marketing pipe line, and we will be watching the area very closely at all times to see what developments take place, and if there are discoveries made off this particular reservation, we would be associating ourselves with any exploration development in any part of the land or in the area. This is a normal thing in the oil industry.

**The Chairman:** My understanding is that while we may grant a charter to this group, for example, it is up to the National Energy Board to decide who should get the pipe line.

**Senator Croll:** The point I wanted to make is that there is no limit on the time in which they must make a move. That point is open; they can get a pipe line charter and they could conceivably wait for a long time before going ahead with the pipe line. Some of the other companies have put a time limit within which they must do something or start building. But Mr. Matheson says they have no plans immediately.

**Mr. Matheson:** Not for the actual pipe line. Our problem is that in the event we get production the development and marketing as quickly as possible is most important. By that time we have got a vast amount of money invested in exploration and development, and the pipe line certainly should go ahead as quickly as possible after discovery. Unless you have the vehicle to do that, it makes it extremely difficult to carry out your financing for your exploration and development. To carry out further activities in the general area it is necessary to have an adequate market arrangement.

**The Chairman:** My understanding is that there has never been a time limit put on any of these charters. By giving them a charter we allow them to come into existence, but then they have to go to the National Energy Board before they can operate.

**Senator Kinley:** You want to have your pipe line before you get the supply of oil?

**Senator Prowse:** This is a field which is back in a remote area. There are no highways and no railway transportation. They are going to drill a well there, and if they get production they have to have a pipe line to take that production to the nearest market point. If they wait until they get production and then come in and make an application for a pipe line the whole thing can be held up for a year. I don't have to tell honourable senators of the difficulty at times in getting such an application through Parliament. While there have not been long delays in this House, in the other place quite frequently the delays have been long. Again before you make an application to the National Energy Board for a pipe line or to the provincial authorities for a gathering system you have to have an incorporated company, and that is why an application is being made for incorporation at this stage. Otherwise the situation could be that they would go ahead and drill and then find themselves having to wait something like a year or a year and-a-half before they have the status necessary to get into production and to get that production, if any, to market. If they do not get production, they have simply wasted the money that they have put into it.

**Senator Kinley:** The National Energy Board controls it. They cannot go ahead unless the National Energy Board says so?

**Senator Prowse:** There may be other companies making application too, in which case the National Energy Board decides which application shall be accepted.

**Senator Isnor:** Have arrangements been completed between your proposed company and the West Coast Distributing Transmission Company?

**Mr. Matheson:** No, there have been no proposals made at this time at all. We have nothing really to propose in the way of specific amounts or specific volumes, or anything else. They are a public carrier and as such are obliged to carry our gas. They are obliged to carry our gas if we have it available for the system.

**The Chairman:** Mr. Frawley, who is counsel for the Province of Alberta is here, and if he wishes to address himself to this I am sure we will be glad to hear him.

**Mr. J. J. Frawley, Counsel, Province of Alberta:** I have nothing to say. I have received an assurance from the promoters that if, as and when they find oil on the Alberta side, they will go to the provincial authorities and obtain the necessary permits for the gathering system, and having had that assurance, I have no objection. In fact, I have no objection at all. The law requires companies that cross provincial lines to obtain a special act of incorporation. The situation is that this

oil is going to go, presumably, into British Columbia by the nearest route. This will mean it will not have to go down to Edson and onward by the Transmountain system.

**The Chairman:** Any further questions?

Do I have a motion to report the bill without amendment?

**Hon. Senators:** Agreed.

The committee adjourned.

















Second Session—Twenty-seventh Parliament

1967

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable GUNNAR S. THORVALDSON,  
*Acting Chairman*

---

No. 3

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*Complete Proceedings on Bill S-26*

intituled:

"An Act respecting Trans-Canada Pipe Lines Limited".

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WEDNESDAY, NOVEMBER 8, 1967

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WITNESSES:

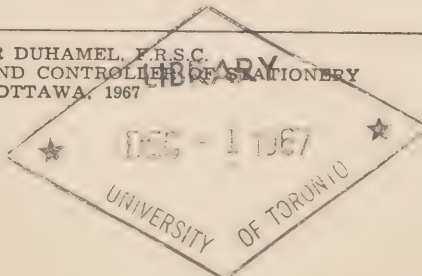
*Trans-Canada Pipe Lines Limited*: J. R. Tolmie, Q.C., Parliamentary Agent; J. W. Kerr, Chairman and President; G. W. Woods, Group Vice-President.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967



MEMBERS  
OF  
THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Acting Chairman*

The Honourable Senators

Aird,	Lang,
Aseltine,	Lefrançois,
Baird,	Leonard,
Beaubien ( <i>Provencher</i> ),	Macdonald ( <i>Brantford</i> ),
Bourget,	McCutcheon,
Burchill,	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska- Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thorvaldson,
Hollett,	Vien,
Isnor,	Welch,
Kinley,	Willis—(44).

*Ex officio members:* Connolly (*Ottawa West*) and Flynn  
(Quorum 9)

### ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill S-26, intituled: "An Act respecting Trans-Canada Pipe Lines Limited", be read the second time.

After debate, and—

The question being put on motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

WEDNESDAY, November 8th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill S-26, intituled: "An Act respecting Trans-Canada Pipe Lines Limited", has in obedience to the order of reference of November 2nd, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

GUNNAR S. THORVALDSON  
*Acting Chairman.*



## MINUTES OF PROCEEDINGS

WEDNESDAY, November 8, 1967.

(3)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.30 a.m.

In the absence of the Chairman, and on motion of the Honourable Senator Lang, the Honourable Senator Thorvaldson was elected *Acting Chairman*.

*Present:* The Honourable Senators Thorvaldson (*Acting Chairman*), Beaubien (*Provencher*), Bourget, Burchill, Connolly (*Halifax North*), Desruisseaux, Dessureault, Fournier (*Madawaska-Restigouche*), Isnor, Lang, Lefrançois, McDonald, Molson and Phillips.—14.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Isnor it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-26, intituled: "An Act respecting Trans-Canada Pipe Lines Limited". Bill S-26 was read and considered.

The following witnesses were heard:

*Trans-Canada Pipe Lines Limited:*

J. R. Tolmie, Q.C., Parliamentary Agent,

J. W. Kerr, Chairman and President.

G. W. Woods, Group Vice-President.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 12.00 o'clock the Committee adjourned to the call of the Chairman.

Attest.

Patrick J. Savoie,  
*Clerk of the Committee.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Wednesday, November 8, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill S-26, respecting Trans-Canada Pipe Lines Limited, met this day at 11.30 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson** in the chair.

**The Acting Chairman:** Honourable senators, may I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

**Senator Lang:** In connection with the presentation of this bill, we have before us this morning Mr. Ross Tolmie, Parliamentary Counsel, Trans-Canada Pipe Lines Limited; Mr. J. W. Kerr, President; Mr. Woods, the Group Vice-President of the company; and Mr. Clarry, Solicitor and Counsel.

**The Acting Chairman:** Well, gentlemen, we are now ready to proceed with this bill. Do you wish to begin, Senator Lang?

**Senator Lang:** I think Mr. Tolmie could introduce the bill most effectively and give a general outline of its provisions.

**Mr. J. R. Tolmie, Q. C., Parliamentary Agent, Trans-Canada Pipe Lines Limited:** Mr. Chairman, honorable senators, the purpose of this bill was outlined very completely by Senator Lang on November 2 before the Senate when it was referred here. I will only suggest that Mr. Kerr, Chairman and President, be allowed to speak to you in amplification of what Senator Lang said on that occasion. We also have with us, as Senator

Lang indicated, the Group Vice-President who is the financial man of the company, and also John Clarry of McCarthy & McCarthy, to answer any questions on the specific terms of the change in the capitalization and the terms of the preferred issue which generally is in line with the amended Canada Corporations Act.

Mr. Kerr is a graduate of the University of Toronto, he is an engineer and was a vice-president of Canadian Westinghouse before he came to Trans-Canada. Mr. Woods is a Montreal man originally, and went to McGill and was a practising chartered accountant before he became Treasurer and now Group Vice-President of the company.

This bill, as I have already said, is to authorize the increase of capitalization both of common and preferred to enable the company to finance the expansion of its facilities in Canada in the foreseeable future. It is clearly indicated that such expansion will be necessary to meet the energy and gas requirements of Canada over the next ten years or so. If it is your pleasure, Mr. Chairman, I would ask Mr. Kerr to outline in broader detail what is involved.

**Mr. J. W. Kerr, Chairman and President, Trans-Canada Pipe Lines Limited:** Mr. Chairman and honourable senators, I genuinely appreciate the opportunity to make a few remarks and to discuss the bill which proposes an amendment to Trans-Canada's special act of incorporation. Before discussing the bill I want to say a few words about the company. A year from now Trans-Canada Pipe Lines Limited will be celebrating its tenth anniversary as a gas transmission operation. The system now includes 3,000 miles of pipe lines, big inch pipe lines, from Alberta to the Quebec border and on to the Quebec-Vermont border. I would like you to look at this map, if you can see it from where you are sitting.

Trans-Canada buys its gas at the present time in the Province of Alberta at the well-head, and it is gathered by the Alberta Gas

Trunk Line Company Limited. The Trans-Canada system starts at the Alberta-Saskatchewan border, at Burstall, Saskatchewan. At the present time we have two 34-inch diameter natural gas high-pressure pipe lines through to Winnipeg, a distance of 586 miles. Then we go to the south with a 30-inch line to Emerson, Manitoba. We come through northern Ontario with a 30-inch system, through to Toronto, a distance of 1,248 miles. At that point the system is 1,834 miles long. We have a 20-inch line to Niagara Falls, 110 miles. Then we extend eastward to Montreal from Toronto, a distance of 308 miles of 20-inch pipe, and on to the Quebec-Vermont border. The Great Lakes Gas Transmission Company is shown in hatched red, and comes along the south shore of Lake Superior, across the Mackinac Strait, and back into Canada at a point near Sarnia.

Our system includes 45 compressor stations along the pipe line with a total capacity of more than 575,000 horsepower. We deliver gas to Canadian distribution companies, those that serve directly to the residential and commercial markets, at more than 120 sales points along the line, and we also make export sales at Emerson, Manitoba, Cornwall, Ontario and to Vermont at the Quebec border.

The total sales of natural gas in the last fiscal year, 1966, were 401 billion cubic feet, and our peak day—that is, our maximum sales in one day—was 1,356 million cubic feet. To put that into perspective, against the 401 billion cubic feet last year, in 1959, our first full year of operation, our sales were 74 billion cubic feet.

We are proud of the fact that Trans-Canada is truly a Canadian company. We have 35,000 common shareholders and over 87 per cent of them are residents of Canada, owning over 94 per cent of the common shares of the company. Residents of Canada also own over 99 per cent of the preferred shares. So, we are truly a Canadian company.

Mr. Tolmie mentioned that Mr. Woods came originally from Montreal. My home town is Hamilton, Ontario, and I am always very pleased to be able to say that the senior management team of our company is basically Canadian, nine of our top ten officers having been born and educated in Canada. As you probably know, our two largest corporate shareholders are Canadian companies—Canadian Pacific and Home Oil Company Limited of Calgary.

Prospects for the future requirement for natural gas indicate the need for very substantial additions to our pipe line facilities in the years ahead. After the initial spectacular penetration of natural gas in the domestic energy market, in the last few years the industry has averaged a compound growth—and this is the overall industry—an annual growth on a compounded basis of about 10 per cent per year. It is quite realistic to expect a similar annual growth during the next five years. Our best estimate of the future acceptance of gas is that it will supply 25 per cent of Canada's total energy markets by 1985. In the last statistical year, 1966, it supplied about 18 per cent; and 20 years ago it was just over 3 per cent.

Research and development and new applications for natural gas will certainly contribute to very much greater acceptance of gas in future years in Canada.

During recent years we in Trans-Canada have been transmitting about 50 per cent of the total volume of natural gas moved in Canada. We have been moving about 50 per cent of the total to the market.

**Senator Isnor:** What do you mean by "the market"—the Canadian market?

**Mr. Kerr:** Yes, the Canadian market, the total from British Columbia through to Quebec. We expect that this participation will grow in the future. We will probably grow to 65 to 70 per cent of the total movement of gas in the future. This means that Trans-Canada, as a gas transmission company, will probably grow at a rate even more rapid than the overall natural gas industry. In the early 1960's, after natural gas became available as a result of the Trans-Canada system in eastern Canada, our company was growing at a rate of 15 per cent per annum, which is a rate of growth equivalent to doubling over 4½ to 5 years.

The anticipated future growth of our company is one of the principal reasons that Bill S-26 is before you today. In this bill we are requesting certain amendments of our Special Act of Incorporation. One is an increase in our common stock. We are requesting an increase in our common stock from ten million to 25 million shares; and in our preferred stock from one million to five million preferred shares.

As I believe you know, Trans-Canada was incorporated by a special act of Parliament in 1951, and some changes in the authorized capital were made in 1954. Since that time,



which was prior to the commencement of the operation of our pipe line system, there have been no changes in this special act. During this period, however, we have had very substantial construction programs each year, including pipe line looping, the installation of additional compressor horsepower and the construction of new compressor stations along the line. When I say "looping," I mean the construction of another pipe line parallel or adjacent to the initial one.

In view of this increase in capital investment and requirements for future expansion, I believe you will appreciate that the authorized capital initially required for the company is no longer adequate to meet our needs. Of the 10 million common shares authorized, only about 539,000 are available in the company's treasury for issue. All the one million preferred shares have been issued.

In addition to the increase of the capital of the company, the bill also provides for some amendments to the provisions of the special act dealing with preferred shares, with the subdivision and consolidation of shares, and with payments of stock dividends.

The bill also deals with a change in the scope of the electronic communication facilities used in our gas transmission system. Some of these matters are rather technical and legal, and, as Mr. Tolmie indicated, I have some of my associates with me and we will try to help you with answers to any questions you may have on the proposed bill.

Thank you very much, sir, for letting me make these few remarks.

**The Acting Chairman:** Gentlemen, would any of you like to ask any questions of Mr. Kerr?

**Senator Connolly (Halifax North):** Your preferred shares are held where and by whom?

**Mr. Kerr:** As I mentioned, over 99 per cent are held by residents of Canada.

**Senator Connolly (Halifax North):** The preferred shares?

**Mr. Kerr:** Yes, the preferred shares.

**Senator Burchill:** With regard to your distribution system, you distribute to other companies, do you?

**Mr. Kerr:** Yes. We have 14 distribution companies that are located along the pipe line system: First, in Saskatchewan the Sas-

katchewan Power Corporation; Brandon, Greater Winnipeg and Winnipeg; Twin City in Port Arthur; Northern Ontario; Union Gas in southwestern Ontario; Consumer Gas, eastern Ontario, and Ottawa Gas; Quebec Natural Gas in Montreal—and so on.

**Senator Burchill:** Are they all independent companies? Have you any connection with them?

**Mr. Kerr:** No, they are customers. We serve them with our gas from the fields to their delivery gates, and they sell it at that point. There is no other connection.

**Senator Isnor:** What connection is there between your company and Alberta Gas?

**Mr. Kerr:** Alberta Gas Trunk Line, sir?

**Senator Isnor:** Yes.

**Mr. Kerr:** We have a gas gathering service contract with Alberta Gas Trunk Line. They gather the gas, and so far as connection with them is concerned let me say that we work closely with them on system expansion, making sure that their system goes to fields in Alberta from which we are buying gas. We are always buying ahead of demand. You must realize that it takes up to five years from the time that gas is discovered to the time that it gets into our pipe line. We work closely with them on a technical planning basis, but there is no corporate connection.

**Senator Isnor:** They have 586 miles of line, I understand.

**Mr. Kerr:** That is our line from Burstall, Saskatchewan in western Canada to Winnipeg. Trans-Canada maintains that. That is part of the Trans-Canada system. We have compressor stations and maintenance personnel spotted all along that section of the line. As a matter of interest, we fly that line once a week, and patrol it from the air, and we walk it twice a year.

**Senator Connolly (Halifax North):** Do you contemplate an extension of your line east of Montreal?

**Mr. Kerr:** That is possible. Our policy, of course, is to serve the market that actually exists. Assuming that there is economic feasibility in those areas east of Montreal, then that is quite possible. There have been many market studies done in recent years. We have done some ourselves, and so has Quebec Natural Gas, which is now Northern and

Central Gas Company. When the market is there we expect it will be served.

**Senator Fournier (Madawaska-Restigouche):** Something has been said about the pressure. As a matter of interest, what is the pressure in these pipes?

**Mr. Kerr:** It varies with the diameter of the pipe. West of Winnipeg we have two 34-inch diameter lines, and they operate at approximately 730 pounds per square inch. The 30-inch system in northern Ontario, a smaller diameter line, operates at approximately 925 pounds per square inch.

**Senator Fournier (Madawaska-Restigouche):** And how fast is the flow of gas in these pipe lines? Is that a stupid question or—

**Mr. Kerr:** It is not an easy one to answer. As a generalized answer I can say that it takes gas about five days to get from the Alberta border to Montreal, so we will say it travels at from 40 to 45 miles an hour.

**Senator Isnor:** Senator Connolly asked you about an extension of the pipe line east of Montreal. Do you expect to go into Montreal?

**Mr. Kerr:** We are down to the Quebec border. It is possible that the market east of Montreal will be served, but there is no decision yet as to how far we might go.

**The Acting Chairman:** Mr. Kerr, I might ask you if there is any natural gas being distributed now in the Maritime provinces.

**Mr. Kerr:** No, sir, not at this stage.

**Senator Molson:** You mentioned buying gas at the Alberta-Saskatchewan border. All the gas you carry in your own pipe lines is your own gas, is it? It is all purchased, and is your own once it is in the pipe line?

**Mr. Kerr:** Yes, we buy it at the wellhead in Alberta, and Alberta Gas Trunk Line takes it to the western gate at the Alberta border, and we haul it to the market from there.

**Senator Molson:** But you buy it at the well head?

**Mr. Kerr:** Yes.

**Senator Burchill:** Is your tariff based on distance?

**Mr. Kerr:** Yes, we have a zone system of pricing, and it is tied in with distance, because the capital cost is directly—well, not

directly, but it is generally proportionate to the distance. It is also more expensive to build a pipe line in rocky country than it is over the prairie, for instance. However, the tariff is generally in accordance with the distance.

**Senator Desruisseaux:** In looking at the bill I see that it is proposed to increase the capital stock of the company by 15 million common shares and four million preferred shares. Has any provision been made for the absorption of these shares in this country, or are they to be absorbed by American concerns?

**Mr. Kerr:** No, sir, we have no immediate plans for the issue of any of these additional shares. So far as their ultimate disposition is concerned I would certainly hope there will be a very high Canadian participation. We have a very large Canadian ownership now, and there is no anticipation that there will be large blocks sold in the United States.

**Senator Desruisseaux:** It is an important question because it has been raised many times before. Another question I have is as to whether it is anticipated to retire the debentures and bonds by the money created by the sale of those shares.

**Mr. Kerr:** I shall ask Mr. Woods to assist me in answering that question. I am not sure that I quite understand it.

**Senator Desruisseaux:** Would the income derived from the sale of these common and preferred shares be used to retire the bonds and debentures of the company?

**Mr. Kerr:** This gives me an opportunity to introduce Mr. Woods, who is in charge of our financial affairs.

**Mr. G. W. Woods, Group Vice-President, Trans Canada Pipe Lines Limited:** There is no plan to retire any of our outstanding debt except through the sinking fund and retirement provisions that are in the debt now.

**Senator Bourget:** Do you intend to split the stock? Is that a fair question to ask you?

**Mr. Kerr:** There are no plans before Trans-Canada's management or the board of directors at this stage on that.

**Senator McDonald:** I think you told the committee that you anticipated that by 1980—and please correct me if I am wrong—natural gas would supply 25 per cent of

the energy requirements of this country. Is that correct?

**Mr. Kerr:** It was by 1985, sir.

**Senator McDonald:** Where do you anticipate the growth will come to enable you to meet this target? Is there any given area of Canada that would make this possible, or will this come about by increased sales generally across the area you are serving now?

**Mr. Kerr:** It would be generally across Canada, east of Alberta. The bulk of the growth would be in Ontario and quite likely in the Province of Quebec. The general acceptance of natural gas for home heating is one significant example. The demand for home heating has grown very significantly in recent years, and we expect that to continue.

**Senator McDonald:** That is really answering my second question. Would it be in the industrial areas or in domestic home heating that you expect a large growth to occur?

**Mr. Kerr:** We expect all portions of our market will grow—commercial, residential, and industrial. It is difficult to predict at this stage, but I think the total effect of the growth in the industrial market would be rather significant on our total expansion.

**Senator Molson:** Mr. Chairman, may I ask Mr. Kerr what the present status of the Great Lakes Transmission line is?

**Mr. Kerr:** Yes, sir, it was approved, as you probably know, in the fall of 1966 by the Government of Canada. It was approved in June, 1967 by the Federal Power Commission. Construction started very shortly after P.C. approval, and construction is well under way. Since September 23 we have been bringing relatively small volumes of gas from a storage field in Michigan into the storage field in Dawn Township near Sarnia, which is a 20-mile haul.

Construction of Stage 1, which is from Farwell, Michigan—which is at about that point on the map (indicating)—to the border is well on the way, and will be completed very shortly. It will not be very long before it is tested and in operation.

Then, the construction of Stage 2 will be started this winter and will continue on through to the fall of 1968. That is from Emerson, Manitoba, on the Minnesota-Ianitoba border, to connect up with the point at Farwell, Michigan. This includes the

Mackinac Strait crossing, which is a rather difficult engineering feat.

**Senator Molson:** It will be concluded when?

**Mr. Kerr:** The target is November, 1968. The U.S. opponents of Great Lakes have launched a court action to try to hold it up, but the interim financing is completed, and construction is under way, and all our plans are made.

**Senator Molson:** Will this require a Presidential permit?

**Mr. Kerr:** At the time the Federal Power Commission granted its approval in June of this year it did, yes.

**The Acting Chairman:** Mr. Kerr, can you estimate now how big an increase this new construction is going to develop in the area you now serve? What will be the percentage increase in sales?

**Mr. Kerr:** We have under contract at the present time sales that will give us a throughput of 725 billion cubic feet by 1972. That is a very conservative estimate of where we will go. Assuming that gas is available in western Canada, and I think it will be, sales five years from now could be substantially in excess of 725 bcf. As I mentioned earlier, in Canada, in 1966, it was 401.

**Senator McDonald:** Is the Great Lakes Gas Transmission Company wholly owned by Trans-Canada?

**Mr. Kerr:** No sir, it is 50 per cent owned. We own half and the American Natural Gas Company of Detroit owns half. The President and Executive Vice-President and General Manager, the two key executives in Great Lakes Gas Transmission Company, are former Trans-Canada people.

**Senator McDonald:** They are Canadian?

**Mr. Kerr:** Mr. McNeill is from Calgary.

**The Acting Chairman:** Mr. Kerr, at the outset you mentioned that the C.P.R. was one of the largest shareholders of the company. Do you mean C.P.R. or C.P.I., Canadian Pacific Investments?

**Mr. Kerr:** Canadian Pacific Investments.

**The Acting Chairman:** Are there any further questions of Mr. Kerr?



Are there any questions you would like to ask of any of the officials here?

Do you want to go through the bill clause by clause or will you accept it as a package?

**Senator Molson:** I move that we report the bill.

**Senator Isnor:** I second.

**The Acting Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**The Acting Chairman:** I should just like to add that I have the usual certificate of the Law Clerk and Parliamentary Counsel to the effect that the bill is in proper legal form.

The committee adjourned.











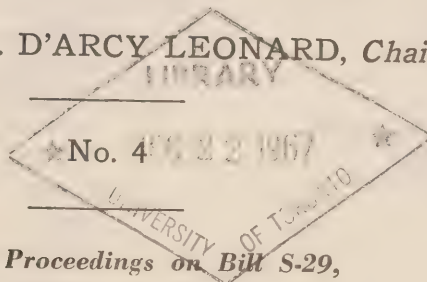




Second Session—Twenty-seventh Parliament  
1967

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

The Honourable T. D'ARCY LEONARD, *Chairman*



*Complete Proceedings on Bill S-29,*  
intituled:

"An Act to provide for the dissolution of Northern Ontario  
Pipe Line Crown Corporation".

WEDNESDAY, DECEMBER 6th, 1967

WITNESSES:

*Northern Ontario Pipe Line Crown Corporation:* W. J. Mulock,  
Secretary; N. Tokaryk, Treasurer.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1967

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable T. D'Arcy Leonard, *Chairman*  
The Honourable Senators

Aird,  
Aseltine,  
Beaubien (*Provencher*),  
Bourget,  
Burchill,  
Connolly (*Halifax North*),  
Croll,  
Davey,  
Desruisseaux,  
Dessureault,  
Farris,  
Fournier (*Madawaska-  
Restigouche*),  
Gélinas,  
Gershaw,  
Gouin,  
Haig,  
Hayden,  
Hays,  
Hollett,  
Isnor,  
Kinley,

Lang,  
Lefrançois,  
Leonard,  
Macdonald (*Brantford*),  
McCutcheon,  
McDonald,  
McElman,  
McGrand,  
Méthot,  
Molson,  
Paterson,  
Pearson,  
Phillips,  
Power,  
Quart,  
Rattenbury,  
Roebuck,  
Smith (*Queens-Shelburne*),  
Thorvaldson,  
Vien,  
Welch,  
Willis—(43).

*Ex officio members:* Connolly (*Ottawa West*) and Flynn  
(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 23, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Isnor, that the Bill S-29, intituled: "An Act to provide for the dissolution of Northern Ontario Pipe Line Crown Corporation", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, December 6th, 1967.

(4)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 12.00 noon.

*Present:* The Honourable Senators Leonard (*Chairman*), Aseltine, Burchill, Connolly (*Halifax North*), Fournier (*Madawaska-Restigouche*), Hays, Hollett, Lefrançois, McDonald, McGrand, Molson and Rattenbury—(12).

*Present but not of the Committee:* The Honourable Senator Benidickson.

On Motion of the Honourable Senator Connolly (*Halifax North*) it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-29, intituled: "An Act to provide for the dissolution of Northern Ontario Pipe Line Crown Corporation".

Bill S-29 was read and considered.

The following witnesses were heard:

*Northern Ontario Pipe Line Crown Corporation:*

W. J. Mulock, Secretary.

N. Tokaryk, Treasurer.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Patrick J. Savoie,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

WEDNESDAY, December 6th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill S-29, intituled: "An Act to provide for the dissolution of Northern Ontario Pipe Line Crown Corporation", has in obedience to the order of reference of November 23rd, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Wednesday, December 6, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill S-29, an Act to provide for the dissolution of Northern Ontario Pipe Line Crown Corporation, met this day at 12.00 noon to give consideration to the bill.

**Senator T. D'Arcy Leonard (Chairman)** in the Chair.

**The Chairman:** Honourable senators, it is 12 o'clock and we have a quorum. We have before us for our consideration Bill S-29, to provide for the dissolution of Northern Ontario Pipe Line Crown Corporation. This bill originates in the Senate, so may I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

As witnesses we have Mr. W. J. Mulock, Secretary of Northern Ontario Pipe Line Crown Corporation, and Mr. N. Tokaryk, its Treasurer.

Second reading of this bill was moved in the Senate by Senator Benidickson who explained it very well. If it is agreed, I will ask Mr. Mulock to tell us about the bill, its purpose, and what we have to deal with in it. Is that agreed?

**Hon. Senators:** Agreed.

**Mr. W. J. Mulock, Secretary, Northern Ontario Pipe Line Crown Corporation:** Mr. Chairman, shall I speak from this position, or shall I stand?

**The Chairman:** You may remain seated, if you wish.

**Senator Connolly (Halifax North):** Is this bill so onerous, Mr. Mulock, that you have to sit down?

**Mr. Mulock:** No. I will stand. The Northern Ontario Pipe Line Crown Corporation was established on June 7, 1956, for the purpose primarily of constructing the Northern Ontario section of what was then known as the all-Canadian natural gas pipe line, or, in other words, the portion of that pipe line between the Ontario-Manitoba border and Kapuskasing, a distance of 675 miles.

It also had the responsibility of carrying out the undertakings of the Government in respect of the making of loans to Trans-Canada Pipe Lines Limited for the construction of the western section. The western section was completed, and subsequently work was undertaken on the Northern Ontario section. That construction was completed, and the line was leased to Trans-Canada Pipe Lines Limited pursuant to a lease agreement. That agreement included the terms that had been agreed upon between the Government of Canada and Trans-Canada Pipe Lines Limited.

The corporation, having completed construction, and having entered into a lease agreement with Trans-Canada Pipe Lines Limited was not then too active except as to its responsibilities for obtaining the rentals from Trans-Canada.

Subsequently, pursuant to the lease agreement, Trans-Canada exercised its option to purchase on May 29, 1963, for a price calculated pursuant to the purchase option clause. The aggregate of rental payments for the period from October 22, 1958, to May 29, 1963, amounted to \$41,110,773. This rental payment was applied to yield a 3½ per cent return on investment in the amount of \$19,627,330, and the balance of \$21,483,443 to the amortization of capital cost.

The purchase price paid by Trans-Canada Pipe Lines Limited on May 29, 1963, was \$108,372,873, representing the capital cost

amortized at  $3\frac{1}{2}$  per cent per annum together with interest thereon at  $3\frac{1}{2}$  per cent per annum compounded annually from October 22, 1958.

**Senator Aseltine:** Was the rental applied on the purchase price, or was that sum paid following the making up of the agreement for sale?

**Mr. Mulock:** Perhaps Mr. Tokaryk, the Treasurer, might answer that question.

**Mr. N. Tokaryk, Treasurer, Northern Ontario Pipe Line Crown Corporation:** The amount of \$108 million-odd that was paid was the net amount after the rentals were completed. The total cost was \$129 million odd.

**Senator Aseltine:** And the rent?

**Mr. Tokaryk:** That portion of the rent that was in excess of the  $3\frac{1}{2}$  per cent return on investment was applied to the purchase price.

**Senator Aseltine:** It was applied on the purchase price, and the balance was how much?

**Mr. Tokaryk:** The balance was \$108 million odd.

**Senator Aseltine:** And that has been paid?

**Mr. Tokaryk:** That has been paid, yes. It was paid on May 29, 1963.

**Senator Rattenbury:** In other words, the interest was considered as rent?

**The Chairman:** The sum owing was calculated as if it would yield  $3\frac{1}{2}$  per cent, and the rentals were also calculated at the same rate, so that one offset the other, and the net amount then due—in effect, I understand that the Government got its purchase price back, with  $3\frac{1}{2}$  per cent interest on it.

**Mr. Tokaryk:** That is right. The purchase clauses were created with that in mind. There were several clauses in the purchase agreement geared to encourage Trans-Canada Pipe Lines Limited to buy it at the earliest possible date on which they could afford to buy it. For example, four years after completion there were additional rentals due which were not applied to the purchase price. It was a sort of penalty which had been directed towards discouraging undue delay.

**Senator Rattenbury:** After four years?

**Mr. Tokaryk:** Yes, after four years, and if they had to carry on there were further

penalties which would encourage them to buy at as early a date as possible, because the price was getting tougher as the years went on.

What they paid us was \$108 million odd that was the net, plus additional rental because they got into the fourth year, and the thing was becoming a little more costly.

**Senator Connolly (Halifax North):** And was there an actual loss?

**Mr. Tokaryk:** A loss to whom?

**Senator Connolly (Ottawa West):** To anybody concerned?

**Mr. Tokaryk:** No, the Government got all the interest, and it was paid all the administrative expenses of the employees and the supervision, and everything.

**The Chairman:** And the interest on its money?

**Senator Aseltine:** And the construction costs?

**Mr. Tokaryk:** Yes, all the construction costs, and the interest on loans made by the Government during the construction period was capitalized into the cost of the line. All of that was paid back.

**Senator McDonald:** And all of that was included in the \$129 million odd?

**Mr. Tokaryk:** That is right.

**Senator Fournier (Madawaska-Restigouche):** So, nobody lost anything?

**Senator Connolly (Halifax North):** Nobody was hurt.

**Mr. Tokaryk:** There is a surplus of \$690,000 odd.

**The Chairman:** Which is with the Receiver General?

**Mr. Tokaryk:** Yes.

**The Chairman:** Have you finished your statement, Mr. Mulock?

**Mr. Mulock:** I have here, Mr. Chairman, a copy of the minute of the meeting of the Committee of the Privy Council which approved the exercise of the option and the disposal of the Northern Ontario section to Trans-Canada Pipe Lines Limited. From May 29, 1963, when Trans-Canada Pipe Lines Limited exercised its option, to this date the Corporation's activities have been limited to



the holding of the annual meetings of the board of directors, the preparation of the annual reports, and replies to correspondence and parliamentary inquiries.

**Senator Molson:** It sounds like a very happy story, Mr. Chairman. I move we report the bill without amendment.

**The Chairman:** I think it might be as well to put on the record that in 1965 there was an item in the Estimates, a one dollar item, to wind up this corporation, and do it as it is now being done by statute. Apparently it was thought that this could be done by an item in the Estimates. Is that right, Mr. Mulock?

**Mr. Mulock:** Yes sir.

**The Chairman:** And what happened to that?

**Mr. Mulock:** That item was withdrawn. Certain exception was taken at the time to the principle that a one dollar item in a supplementary estimate should be used for purposes that were legislative in nature. It was not on the issue of the Northern Ontario Pipe Line, but in another connection. It was decided at that time to withdraw.

**The Chairman:** And now this is being done in the appropriate way by bringing in a statute to terminate the existence?

**Senator Burchill:** Was it in 1966, too?

**The Chairman:** In 1965, it was in the Estimates.

**Senator Burchill:** Was it in 1966, too?

**The Chairman:** As far as I know, it has never been in the Estimates since. Is that right?

**Mr. Mulock:** It has not, not to my knowledge.

**Senator Aseltine:** Was it because a one dollar item did not mean so much?

**Mr. Mulock:** Because it was withdrawn.

**The Chairman:** Senator Molson moves that we report the bill without amendment.

**Hon. Senators:** Agreed.

**The Chairman:** Is there any other business? If not, the meeting is adjourned.

The committee adjourned.

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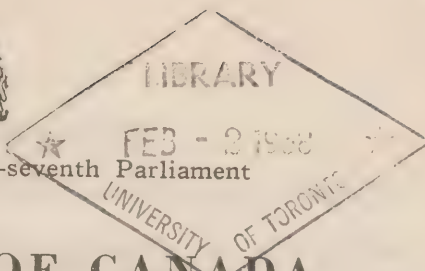






Second Session—Twenty-seventh Parliament

1967



**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable T. D'ARCY LEONARD, *Chairman*

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No. 5

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*Complete Proceedings on Bill C-151,*  
intituled:

"An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1967 to the 30th day of June 1968, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company".

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WEDNESDAY, DECEMBER 20th, 1967

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WITNESSES:

*Canadian National Railways:* R. T. Vaughan, Vice-President and Secretary (and Secretary, Air Canada); J. W. G. Macdougall, Q.C., General Counsel; and W. G. Cleevely, Co-ordinator of Capital Budgets.  
*Air Canada:* H. D. Laing, Assistant Vice-President, Finance.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable T. D'Arcy Leonard, *Chairman*  
The Honourable Senators

Aird,	Lang,
Aseltine,	Lefrançois,
Beaubien ( <i>Provencher</i> ),	Leonard,
Bourget,	McCutcheon,
Burchill,	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska- Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thorvaldson,
Hollett,	Vien,
Isnor,	Welch,
Kinley,	Willis—(42).

*Ex officio members:* Connolly (*Ottawa West*) and Flynn.  
(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, December 12, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Thompson seconded by the Honourable Senator Argue for second reading of the Bill C-151, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian Railways System for the period from the 1st day of January 1967 to the 30th day of June 1968 and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian Railway Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thompson moved, seconded by the Honourable Senator Desruisseaux, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, December 20th, 1967.

(5)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10:00 a.m.

*Present:* The Honourable Senators Leonard (*Chairman*), Connolly (*Ottawa West*), Fournier (*Madawaska-Restigouche*), Gouin, Macdonald (*Brantford*), McDonald, McGrand, Méthot, Paterson and Vien—(10).

*Present, but not of the Committee:* The Honourable Senators Grosart and Thompson.

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On motion of the Honourable Senator McDonald it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill C-151.

Bill C-151, "Canadian National Railways Financing and Guarantee Act, 1967", was read and considered.

The following witnesses were heard:

*Canadian National Railways:*

R. T. Vaughan, Vice-President and Secretary, and Secretary, Air Canada.

J. W. G. Macdougall, Q.C., General Counsel.

*Present, but not heard:*

W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.

H. D. Laing, Assistant Vice-President, Finance, Air Canada.

On motion of the Honourable Senator Vien it was *Resolved* to report the said Bill without amendment.

At 11:20 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,  
Clerk of the Committee.

## REPORT OF THE COMMITTEE

WEDNESDAY, December 20th, 1967.

The Standing Committee on Transport and Communications to which was referred the Bill C-151, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1967 to the 30th day of June, 1968, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company", has in obedience to the order of reference of December 12th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Wednesday, December 20, 1967.

The Standing Committee on Transport and Communications, to which was referred Bill C-151, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1967 to the 30th day of June, 1968, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company, met this day at 10 a.m. to give consideration to the bill.

**Senator T. D'Arcy Leonard (Chairman)** in the Chair.

**The Chairman:** Honourable senators, 10 o'clock has already struck and I see a quorum. We have before us this morning Bill C-151, the Canadian National Railways Financing and Guarantee Act of 1967. This has been debated over several sessions in the Senate and referred to the committee. We have as witnesses some gentlemen who have been with us before and who are quite well known to us: Mr. R. T. Vaughan, Vice-President and Secretary of the Canadian National Railways. He is also Secretary of Air Canada, so that he is familiar with that aspect as well.

Also with us is J. W. G. Macdougall, Q.C., General Counsel for the Canadian National Railways; Mr. W. G. Cleevly, Co-ordinator of Capital Budgets, and Mr. H. D. Laing, Assistant Vice-President, Finance, of Air Canada.

Before we proceed with any evidence, in view of the fact that this is a Government bill of some importance, shall we have the usual order for the printing of the proceedings in French and in English?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the

printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

**The Chairman:** Shall we proceed in the usual way by having Mr. Vaughan make a statement in connection with this bill and then, when he has finished, if there are any further statements that he would like the other witnesses to make they could proceed to do so, after which we might begin our questioning. Is that agreeable?

**Hon. Senators:** Agreed.

**The Chairman:** Mr. Vaughan, would you like to go ahead?

**Mr. R. T. Vaughan, Vice-President and Secretary, Canadian National Railways:** Thank you. Mr. Chairman and honourable senators, it is a great pleasure for me and the other officers to appear before you again, and we hope that the explanation we give in relation to Bill C-151 might assist you in your deliberation of it. Following that, we would endeavour to answer any particular questions you may have.

Mr. Chairman and senators, with your permission, I might like to suggest that we could proceed in the fashion that we did the last time we were here, and in that connection I would like to ask Mr. Macdougall, the General Counsel of the company, if he would give a brief explanation of the bill, clause by clause, in order to put the various elements of it into perspective, if that is agreeable.

**Hon. Senators:** Agreed.

**Mr. J. W. G. Macdougall, Q.C., General Counsel, Canadian National Railways:** Thank you. Mr. Chairman, honourable senators, as you are aware the financing of Canadian National requirements and those of Air Canada begins early in each calendar year with the preparation of the budget for both of these companies for the ensuing year. Under the

Canadian National Railways Act, section 37, there is a direction that the annual budget of the company shall be under the control of the board of directors, and the procedure is set out there for the approval of the budget. It is submitted by the board of directors, after they have approved it, to the Minister of Transport who in turn obtains the approval of the Governor in Council. This is also done pursuant to section 80 of the Financial Administration Act. Then upon the recommendation of himself and the Minister of Finance the budget is approved and then laid before Parliament. The budget that was laid before Parliament in April 1967 contained details of the work to be done and the moneys to be spent for that work for the year 1967.

In connection with the year 1967, which we are dealing with here today, this budget was approved by Order in Council No. 1967/795 on April 20, 1967. The budget was laid before both the House of Commons and the Senate at that time. That budget, as you may know, is in two parts, a capital budget and an operating budget. The capital budget details the capital works program of the company for the year, and the operating budget deals with the general operating needs of the railway's services during the year.

The purpose of this annual financing and guarantee bill is really to establish a line of credit so that we may proceed with the capital projects set out in the budget and have them financed in an orderly manner for a period of 18 months. The budget itself is an annual budget dealing with 12 months of the year. This bill is designed to provide a vehicle whereby those works can be financed not only for the year contained in the budget but to carry over into the first six months of the following year. This bill which you have before you will provide that authority for 1967 and the first half of 1968 up until July 1. It provides power to borrow the money and it also provides power if necessary for the issuance of securities to obtain those moneys.

As honourable senators are well aware, the capital requirements of Air Canada sometimes need financing arrangements. The Air Canada budget also is dealt with in much the same way as I have described for the C.N. budget and it also is placed before Parliament following approval by the Governor in Council. For the year 1967 Air Canada's budget was approved by Order in Council No.

1967/330 on February 23, 1967, and as is usual this budget for the year 1967 has been laid before both Houses of Parliament.

As a matter of convenience, the practice has been for many years that if Air Canada requires some borrowing during any particular year, this arrangement for borrowing of money and financing—it is contained in the Finance and Guarantee Act such as the one you have before you. You will see on page 2 of the bill that in addition to the requirements estimated for the year 1967 for Canadian National, under Investments of Affiliated Companies there is provision for \$67 million to be borrowed by Air Canada in the year 1967.

I will explain the makeup of clause 3 which is really the most important and perhaps the most complicated part of the bill. I should also say that the bill before you today is in the same general form as previous bills running back quite a number of years. Sometimes, as you know, this bill comes before the house quite early in the year to cover the entire year ahead, thus it may come along either before or immediately after the approval of the capital budget by order in council. Sometimes for reasons over which there is little control it comes along late in the year, such as is the case now, with the result that most of the year is gone.

As you also know, there have been occasions in the past when other things have intervened and the bill has not been passed until the following year. But this does not interfere at all with the authority of the company to go ahead with the capital projects approved by the budget. As soon as that budget is approved the company has authority to proceed with those projects. Of course if it doesn't have the money then it has to make other arrangements—it has to borrow the money, then you need a bill of this kind to enable it to borrow the money from the Government or from the public.

Subclause (1)(a) of clause 3 of the bill deals with the capital works to be undertaken by the company in the year 1967, and these are the same capital works as were approved in the budget last April. The money to carry out those works which has been spent during the year was not borrowed but was raised by Canadian National through its own resources such as, from depreciation, amortization, sale of preferred stock, salvage, etc. As far as Air Canada is concerned, the \$67 million shows



there as required for Air Canada's purposes would have to be borrowed by Canadian National for Air Canada.

This statement of the estimated requirements is really a statement of what we call the line of credit required by the company to carry out its projects. It also shows the limit of the line of credit. The amount required for C.N.'s projects for the year comes to \$197.8 million. That total is not shown there, but that is the total amount less the \$67 million for Air Canada. As I say, it will be available from our own resources, depreciation, amortization, sale of preferred stock, and so on. It may assist you to understand this if I look back to our performance in earlier years. In 1966 the total estimated requirements in our budget, which was approved, was for \$192 million. We estimated that we would likely not be able to complete about \$20 million of this work. That would leave us with \$172 million as our estimated capital requirements for 1966.

**Senator Grosart:** Would that include anything for Air Canada?

**Mr. Macdougall:** No. The actual amount required and in fact spent was \$176.5 million which was a shade over our estimate but was under our total authorization.

In 1965 our total estimated requirements was \$161.6 million for capital works. This, of course, had nothing to do with the day-to-day operation of the trains and so on. This was purely for capital projects. Actually in 1965 we only spent \$136.3 million. The difference in the two figures comes about because of the fact that where we get involved in expenditures of this order of magnitude, we know that everything will not be accomplished, but we cannot tell at the time we are estimating in which areas we will be unable to accomplish our objective. We do not know what may intervene to prevent this. Sometimes there is a shortage of material; sometimes there is a lack of trained personnel and sometimes we have problems of weather in remote areas of Canada. Things of this kind occur to affect our ability to carry out the capital program completely. Therefore, it is an estimate, as we have shown, of our requirements.

Perhaps I should give a little explanation of these various items of road property, branch lines, equipment, and so on. Some may wonder what is included in them.

Road property is the work done on existing lines, such as adjustment of curvature or diverting a line for some purpose. It also includes roadway improvements, which embraces all the real housekeeping of the railway, which we do each year to keep the track, buildings and structures, ballast, ties and fittings all in good condition for efficient operation. This is the type of work, as in maintaining a home, that is always with you; you have to do it to maintain your property in workable condition. It also includes items like our large terminals, such as major hump yards and main flat yards at Port Mann and Edmonton. These major programs are usually on a two- to five-year basis, and the expenditure thus continues over several years. A portion is done this year and some next year and so on, but this is the portion of that general housekeeping work we have estimated we will spend this year.

**Senator Fournier (Madawaska-Restigouche):** Has that amount been increased over the last year, Mr. Macdougall?

**Mr. Macdougall:** The amount last year, senator, was \$60,560,000, and this year it is \$79,701,000. Yes, there has been a slight increase there.

**Senator McDonald (Moosomin):** But this expenditure would not fluctuate that much in any one year over another?

**Mr. Macdougall:** No, it is a large general item of housekeeping we have every year. We have just got to live with that if we are going to keep the property in operating condition.

**Mr. Vaughan:** The sort of what you call basic machinery you require every year in this zone or range of operation. This is what we consider the basic expenditure necessary on the property to overtake obsolescence, and so on.

**Mr. Macdougall:** It also includes yard tracks, buildings, signals, roadway, shop machinery and general items—the basic things we have to have.

**Senator Fournier (Madawaska-Restigouche):** It is a maintenance item, in general?

**Mr. Macdougall:** Yes, and a replacement item.

Under branch lines you see the figure of \$13,125,000. These are expenditures we expect to make this year on new branch lines that

have been previously authorized to be constructed by individual Acts of Parliament. We have the Amesdale to Bruce Lake line, 68 miles in length, requiring \$6,415,000. There is another, in Manitoba, from Stall Lake to Osborne Lake, an extension of the Flin Flon operations of the Hudson Bay Mining & Smelting Co., 12 miles, and that is an item of \$1,740,000; and another line in Saskatchewan of 18 miles, from Watrous to Guernsey, mainly to serve a potash development, that line will require \$1,900,000. In addition, several older lines that were built in earlier years that require some finishing work to be done—making a total of \$13,125,000.

These are resource development lines being built to serve major industries in the country and all, of course, built with our having received guarantees of traffic from the industries they are going to serve to the effect that they will produce enough traffic to make the lines profitable and satisfactory.

Under equipment there is an item of \$85,304,000. This covers the things we know so well, such as locomotives, freight cars, new passenger cars, if we are buying any, and also highway vehicles—trucks, trailers, buses and things of that nature. It also includes additions and conversions to existing equipment, such as passenger and freight cars. There is a continual program of modernization of existing equipment, such as the changeover from ice-cooled refrigerator cars to mechanical refrigeration. There is a large program on the railway going from the old ice-activated to mechanical refrigerators. We are buying new types of equipment and altering various types of equipment demanded by the traffic requirements of our shippers, such as cars for wood chips, potash, sulphite pulp. We are also installing cushioning devices in many of our box cars to cut down loss and damage to freight, and are installing compartments in other cars to meet the needs of particular shippers who require compartmentization. Also we usually have a substantial program of rebuilding diesel locomotives to make them more up-to-date and efficient.

So this is a major item in order to make us competitive and to keep our fleet in a position where it can deal with the traffic requirements.

**Senator Gouin:** I would like to ask about your turbo equipment. Is it included in this amount?

**Mr. Macdougall:** No, the turbo trains, senator, is a special contract arrangement whereby the company producing them will lease them to us on a rental basis. We are not putting up any capital to buy the turbo trains.

The next item is telecommunications. It includes the general maintenance and continuance of the telecommunications plant. The inside plant, as we refer to it, includes switching equipment and other electronic apparatus and devices inside the buildings necessary to handle this type of traffic. We also have what we call outside plant: pole lines, microwave towers and things of that nature. And, as you know, we are continually being called upon to expand the capacity of our system as the demands for additional service over existing lines or in new areas continue. A great deal of the effort of the company in this department has been made in the radio telephone and microwave system in the Canadian North. Canadian National provides a great deal of service in the North, and has been a leader in opening up communication to settlements and industries there.

Under hotels, we have had a five-year program of renovation of our hotels, as honourable senators know. You have seen an example of this in the Chateau Laurier. A substantial portion of the present item is related to the renovations which have continued over these past few years in the Hotel Vancouver. This program is now pretty well drawing to a close.

"Investment in affiliated companies" I have mentioned earlier. This is the capital contribution of Canadian National to railways which we do not fully own but of which we own a part; this is the \$200,000 item called "Other".

I am sure honourable senators are aware that such companies as Northern Alberta Railways, the Toronto Terminal Railway and the Shawinigan Falls Railway are partly owned by the C.N. and partly by the C.P. We also have an interest in two American railways in Chicago: the Chicago and Western Indiana Railroad and Belt Railway Company of Chicago. We own about 8 per cent of the stock in the latter, and 20 per cent of the stock in the Chicago and Western.

**Senator Vien:** Have we on the record a list of the subsidiary and affiliated companies to which this bill refers? We are giving wide powers. I do not object to that at all, but we

are giving wide powers to the company with respect to refinancing or financing subsidiaries.

Then, I would like to ask another question along the same lines, on the distinction between the subsidiary companies wholly owned by the C.N. and what you call affiliated or associated companies. Are there any associated companies in which the C.N.R. have only a part ownership, or is it entirely owned by the C.N.R.?

**Mr. Vaughan:** Mr. Chairman, perhaps in a general way I could refer to that.

Each year, under the various statutes that exist, and principally the Canadian National Railways Act, which is on the statute books and is a statute which, by its predecessor statutes, goes back to 1919, the company is required each year to lay before Parliament, as it does, a copy of its annual report of the year's operations.

**Senator Vien:** In this booklet do you give the ownership of the shareholdings and the corporate ones?

**Mr. Vaughan:** Yes, in this book you will find all this detail.

**Senator Vien:** What is the title of the booklet?

**Mr. Vaughan:** It is called the *Canadian National Railways Annual Report*, and the most recent one is for the year 1966. You will see there, Senator Vien, all this detail to which you refer.

**Senator Vein:** As a general statement, could you say if all the companies to which we suggest the C.N.R. should be allowed to lend money, or to assist in any other way financially, are separately incorporated companies?

**Mr. Vaughan:** Oh yes, sir, they are separately incorporated companies. Some of them exist under old charters which the Parliament of Canada granted even before Confederation. They were the first railways. We are in an historic room here, and I would say that back even before the Act of Confederation, to 1836, there were charters given by provincial legislatures. The first railway act was passed around 1836. There were actually 300 or 400 companies that would be the predecessor companies of the Canadian National Railway Company as you know it today. The companies that now comprise the Canadian National Railway Company are all listed in this annual

report. There is really nothing in this legislation before you that expands, extends or increases any of the authorities that the Canadian National has under its prior statutes.

**Senator Vien:** I was under the impression that when the Canadian National Railway Company was consolidated it acquired the equity in all of these subsidiaries or affiliated companies, and there was only the bonded indebtedness that was outstanding.

**Mr. Vaughan:** That is correct. We acquired the debt. There really was not much equity. That is the reason why the consolidation was made. Looking back into history, as many of the senators know, that was the basic reason for the consolidation—many of these companies were facing bankruptcy. This was the reason for the consolidation in the 1919 statute.

**Senator Vien:** Does that apply to shares in the capital stock of the subsidiaries as well?

**Mr. Vaughan:** Yes.

**Senator Vien:** I thought we had acquired all of them.

**Mr. Vaughan:** Yes, you acquired all of them. Everything was acquired, but what I was really saying was that the acquisition was really mostly debt. The shares were there, but they had no value. This was the whole point of it. Canada assumed the debt.

**Senator Vien:** Were there any other people outside of the C.N.R. who had an equity in these companies, outside of a bonded holding?

**Mr. Vaughan:** I think, through the legal department, we endeavoured to gather in all of those shares that were held. There may have been a few items held, but there is nothing of any size. In any event, these shares are of no value. It was really a matter of simple consolidation, and we tried to gather in all the shares that were outstanding, and then many of the charters of these companies were surrendered.

**Mr. Macdougall:** Over the past number of years we have had a very active program of endeavouring to amalgamate the companies, and so get rid of this huge list. We had a list at one time of about 90 companies, and we are now down into the twenties. We have amalgamated many of these companies, and



eliminated some of them entirely. We found in this process that there were a few shares of stock at some place or other, and these were gathered in to the greatest extent possible. But, most of them were worth nothing because the debts of the company were so much greater than the assets, and the stock was actually worthless.

**Senator Méthot:** What is the company that you mentioned operating at Shawinigan Falls?

**Mr. Vaughan:** It is a small switching terminal railroad in Shawinigan Falls serving the C.N. and the C.P.

**The Chairman:** Would you like to go ahead with your statement, Mr. Macdougall?

**Mr. Macdougall:** Yes, sir. If you look at paragraph (b) of clause 3(1), which is on page 2 of the bill, you will see that having dealt with the capital program for the year 1967 we look ahead to the next six months of the 18-month period covered by this bill. You will see there that authority is given to make capital expenditures not exceeding \$135 million during the first half of 1968—that is, up to July 1, 1968.

The \$135 million is made up of a requirement for \$80 million for capital works for Canadian National, which it plans to execute in the first half of 1968, and \$55 million on behalf of Air Canada.

The \$80 million for Canadian National will not require outside borrowing, other than interim financing, because it will be generated from internal sources of the company, just as all the capital requirements for 1967 have been. Air Canada's \$55 million will be raised by borrowing.

Paragraph (c), just below that, is an important part of this financing arrangement. As honourable senators well know, the contract requirements for both Canadian National and Air Canada are spread over a number of years. Contracts may be made in 1964, to be performed in 1967, 1968 or 1969—for the purchase of equipment and other material.

Paragraph (c) authorizes Canadian National to enter into contracts during the first six months of 1968 to the extent of \$94 million, and the payments for those contracts will not be required until later on in 1968 after the expiry of the first six months, and probably not until 1969, 1970 or 1971. Most of this is for equipment. A large portion of this \$94 million—something in the order of \$75 mil-

lion—is for orders for equipment. If we do not place these orders now we will not get the equipment when we need it. This authority is given to enter into these contracts, but the actual money to be spent will be included in future budgets.

**Senator Fournier (Madawaska-Restigouche):** What percentage of that will be for rolling stock?

**Mr. Macdougall:** About \$75 million of the \$94 million.

**The Chairman:** Does paragraph (c) cover any part of Air Canada's requirements?

**Mr. Macdougall:** No, it does not, sir.

**Senator Vien:** This is still a basic departure from the usual practice of financing from year to year?

**Mr. Vaughan:** This is what we have done for many years. It is no different. It has served us well. We have used it, tried it, and worked with it, and it is satisfactory. It is no different from what it has been.

**Mr. Macdougall:** Now, I should say that in our next ensuing Financing and Guarantee Act which will come a year from now, the \$135 million that I referred to, and for which authority to spend in the first half of 1968 is given, will be included in the overall budget for 1968. In the same manner in the \$264.8 million in paragraph (a) there is included the amount that was approved in the 1966 Financing and Guarantee Act for the first half of 1967. Thus there is no duplication.

**Mr. Vaughan:** Those figures on page 2 will form part, in the next financing act, of the comparable figures that you see now in the authority that is to be given under this bill.

**Mr. Macdougall:** Yes, that is right.

**Mr. Vaughan:** It goes back again, do you see?

**The Chairman:** Yes.

**Mr. Macdougall:** Now, the remainder of Clause 3—that is, subclauses (2), (3), (4), (5) and (6)—deal, with the standard provisions giving Canadian National, with the approval of the Governor in Council, the general authority to borrow from the minister to provide interim financing for Air Canada, which we referred to earlier. There is a general authority to issue securities for that purpose, and a direction that these matters are to be set out definitely in next year's budget—which, of course, we always do.



Section 4 is related to the issuance of securities by the National Company, either to the public or to the Government, for the requirements of Air Canada that have been mentioned.

So far as Canadian National is concerned, while in former years we had to borrow from the Government and the public, we are now in a position where we do not need to do that, but Air Canada, as you know, is met with a situation where it will be required to borrow, mainly for the provision of new aircraft. This provision authorizes the issue of securities to look after these requirements. The total of \$122 million is made up of \$67 million for 1967, to which I referred earlier, plus \$55 million, which is part of the \$135 million in paragraph (b) on page 2, to which I also referred earlier. It is a combination of those two amounts, and is referred to in the explanatory note opposite section 4.

Section 5 authorizes the Governor in Council to guarantee these securities when issued, which is the normal practice.

Section 6 grants authority to the Minister of Finance to loan money to Canadian National which may be required by Air Canada before we have been able to do the financing through securities. Sometimes it is necessary to get money more quickly and this allows the Minister of Finance to make these loans and have them repaid out of the proceeds of the securities. If a public issue is required, this has been done in the name of Canadian National. When the funds are obtained from the minister they stand in their books for C.N., earmarked for Air Canada. Here again you see the amount required is \$122 million, referred to earlier in paragraph 4.

Section 7 contains the general statutory authorization permitting Canadian National to consolidate the capital requirements for telecommunications, hotels, steamships, etc., and it is in the normal form so that we can operate the whole enterprise as an entity.

Section 8 again is a usual requirement which we have always had, that if we do go to the public and sell bonds the proceeds shall be deposited to the credit of the Minister of Finance and then paid out by him. It is the mechanics of how we get the money when the bonds are sold to the public.

Sections 9 and 10 are again normal sections which are in each one of these bills. As I am sure honourable senators are aware, it is usual that at the beginning of the year there

are heavy requirements for operating expenses, and revenues may not be able to keep pace with expenses, so we may require some borrowing to keep going.

Section 9 provides assistance for Canadian National in this regard where the earnings of the company are insufficient to meet its operating requirements. The Minister of Finance may advance money to cover the deficits, and when sufficient funds come into the company treasury these advances are paid off. It is the same thing for Air Canada under section 10.

Sections 11 and 12 are required because of the expiry of the provisions in the Canadian National Railways Capital Revision Act, 1952. Because of this these sections have been incorporated in every Financing and Guarantee Act subsequent to the expiry of the ten-year period in the 1952 act—that is since 1962. They continue the principles of that act until such time as some new capital revision arrangements may be made and approved by Parliament.

The first one provides that C.N. is relieved of the interest payment of the sum of \$100 million, and the second provides for the purchase by the Minister of Finance of 4 per cent preferred stock in an amount equal to 3 per cent of our gross earnings per annum. This is one of the provisions of the Canadian National Railways Capital Revision Act of 1952 which are being carried on. The real effect of sections 11 and 12 is to extend what was intended to be a ten-year period set out in the 1952 Capital Revision Act. It has now become a 15-year period up to the end of 1967.

Section 13 provides for the appointment of auditors for C.N. for the year 1968 and is in the usual form contained in this bill each year.

I hope that gives a clear indication of what the bill is intended to do and what it covers. Thank you.

**Senator Fournier (Madawaska-Restigouche):** Do you always go to the same firm of auditors?

**Mr. Macdougall:** Over a long period of time I would say, no; they change from time to time.

**Mr. Vaughan:** Perhaps I could answer that. We do not appoint the auditors; Parliament does. This appointment of the parliamentary auditor is another requirement which is in another statute, in the Canadian National

Railways Act. It reverts back to the old C.N.-C.P. act, whereby Parliament ordered by statute that the auditor be appointed by Parliament to carry out a continuous audit of the accounts and affairs of the railway system. This is a Government bill and we do not select the auditor; the Government does.

**The Chairman:** I might add that I happen to have in my file a 1962 report, and there was a different auditor at that time.

**Mr. Vaughan:** Yes, they change; it is not the same auditor forever.

**Senator Fournier (Madawaska-Restigouche):** I am not being critical of the auditors, I am just getting curious.

**Senator Grosart:** Mr. Vaughan, when the budget is, to use your not too clear phrase, laid before Parliament, I understand it normally goes to a standing committee of the House of Commons. Is that so?

**Mr. Vaughan:** The procedure is this. Around about now in the company we are putting together the final phases of the 1968 capital budget, and when it is ready that will go to the board of directors of the company, who are ordered by statute to approve the capital budget of the system. When that is done the company forwards this budget to the Minister of Transport and the Minister of Finance. There then ensue various discussions between the company, the Department of Finance and the Department of Transport concerning various features and aspects of the budget, relative to the financing arrangements, if any, that may be required.

Following consideration by the Government—and I do not wish to speak on behalf of the Government; I merely want to give you the procedure—it goes to the Governor in Council and an order in council issues. That order in council is then laid before Parliament. If that is not the correct phrase, it is tabled in Parliament, in any event. After the order in council is passed, the budget is tabled in Parliament.

The other procedure associated with and allied to that is that at about the same time our annual report is referred to Parliament, that is, it is presented to or laid before Parliament. The House of Commons then refers the annual report and the annual budget to a committee of the House. The officers of the company are then called to appear before the House of Commons Transport and Communications Committee, and each year we go there and deal with this annual report and the

budget. Following that examination of the officers on all aspects of the company the budget is then put into this legislative form. That bill is then introduced in the House and debated there; it is not referred to a committee there. It is then referred to the Senate, and the Senate deals with it and refers it to this committee. That roughly, Senator Grosart, is the procedure that is followed.

**Senator Grosart:** Was the 1967 budget and report referred to a Commons committee?

**Mr. Vaughan:** Yes, sir, we appeared before a House of Commons committee. I am not sure of the date, but I believe it was in May or June. In any event, we do go before a committee. Air Canada was there in April and I believe we were there in June; it was in that approximate vicinity. It may vary from March, April and May. These are the times we are called before the committee, depending on house business.

**Senator Fournier (Madawaska-Restigouche):** That is at a time when it has a couple of easy days, I understand.

**The Chairman:** This bill is generally dealt with in Committee of the Whole House, is it not?

**Mr. Vaughan:** Yes, it follows its normal procedure there. Perhaps I eliminated that stage of the house procedure. They take it through its full three readings and it goes through Committee of the Whole.

**The Chairman:** The Special Committee of the House of Commons deals with the budget and the annual report. When the bill comes along the Committee of the Whole deals with it. We rather change the procedure.

**Mr. Vaughan:** Rather than repeat the procedure, I gather that is the reason for this. You do not want to have a duplicate of the method and the manner of that procedure, I gather.

**Senator Grosart:** Why is it necessary to have this act authorized by Parliament, when the details in the act, the grants in the act, the authorities under the act are already approved?

**Mr. Vaughan:** There are certain elements of this legislation that cannot be implemented until you pass it.

No. 1 is any borrowings that are required, that are referred to here, cannot be proceeded with, nor can they be implemented, until this legislation is considered and approved by you. And particularly the borrowings that are



mentioned here, referring to Air Canada. The Government cannot lend the money to Air Canada until this legislation is approved.

No. 2, the references to the preferred stock purchases by the Minister of Finance—they cannot be implemented until this legislation is approved.

Furthermore, the auditor is another element—he cannot officially be paid nor be the legal auditor, until this legislation is approved.

In prior years, perhaps the reason why the practice was that this legislation went to Parliament early in the year, back in the 1950s, was that the borrowing that the Canadian National had in its budget was a very sizeable amount of money. The borrowing requirement did run into \$200 million or \$300 million in the budgets involved. And that borrowing to be arranged with the Government and the Bank of Canada could not be implemented until this legislation was approved by Parliament.

The other element, of course, why the practice is not continued of arranging to pass it in the spring, is that since 1960 the Canadian National system has not required any borrowing to finance its capital expenditures at all, although the authorities and the powers are still, nevertheless, contained in the legislation. All of this money that is involved here for the Canadian National comes mainly through its depreciation account and the preferred stock. However we cannot get the preferred stock funds from the Government until this legislation is passed. So it is meaningful legislation and there are many things that cannot be done until it is on the books.

**Senator Grosart:** Is there a reason why the things that can be done without the authorization of this bill are included in a bill such as this?

**Mr. Vaughan:** The point you make is, I suppose, in some respects a valid one and I have read your remarks in the Senate concerning this. Granted, I know there are certain improvements which can be made in everything. I suppose the reason is that this is the way it has been done. It also has the merit of showing in a complete fashion, everything having to do with the system and its finances for the calendar year.

There are certain authorities that we derive from the other various statutes that Parliament has passed in years gone by. We draw the authorities from those, and for some of

the things that you mention—for instance, the Order in Council was passed pursuant to the Financial Administration Act. That is the statute that Parliament considered and passed some twenty years ago. That gave a method and manner of procedure of continuity for these enterprises to carry on. That is the reason for that. But there is certain room for improvement in anything and I and perhaps the Department of Finance would recognize this. And in the future we could consider this when we consider the other capital structure arrangements that are referred to in this bill.

**Senator Grosart:** Would it make the operation of the company or the system more difficult if your estimates were brought before Parliament in the way that those of the department are?

**Mr. Vaughan:** I have a comment on that but I would like to offer it as a personal comment and really not in relation to the bill.

The tradition and concept of the operation of the Canadian National system, if you look back over its history, was the subject of many royal commissions. The principal one, I believe, would be the Drayton-Acworth Commission back in 1917. That commission was set up because of the difficulties that the then railroads were encountering. After exhaustive review of the operation, (that commission also examined railway operations of many countries throughout the world), it came to the conclusion that it would be better for Canada to have a commercial operation and not have the system operated as a department of Government.

This is the concept of it, but the control and management of it, are nevertheless circumscribed by statutory protections given to a board of directors; and that board of directors by statute is then answerable to Parliament by its annual report. The supreme and final authority rests with Parliament to remove the board of directors and do anything it wishes concerning the system.

My only comment leading from that is that, personally, while I think there is nothing wrong with the manner in which the Departmental estimates are considered, I think that, in dealing with a commercial organization of this kind, it is to the benefit of the organization that it operates commercially and in that fashion, and that the responsibility for the management be left to the managers, with, I say, the statutory controls that Parliament may wish to impose on it.

**Senator Grosart:** Mr. Vaughan, that was not my point. I would agree fully that that would go further than the present arrangements go in allowing a system to operate more commercially.

**Mr. Vaughan:** I thought that was what you had in mind.

**Senator Grosart:** My question here is really related to the fact that you do derive your authority from two ministers.

**Mr. Vaughan:** Well, through statute.

**Senator Grosart:** It does not matter whether...

**Mr. Vaughan:** It is by statute. It is important to remember, that it is by statute.

**Senator Grosart:** It could not be derived any other way.

**Mr. Vaughan:** Well, there may be discretion granted to ministers, under statute.

**Senator Grosart:** I object myself to this principle, because it is an extension of executive authority by order in council, which to me is a highly dangerous thing in a democratic system.

Surely there must be some more sensible way of handling this whole thing? You say that you wish the C.N.R. to operate commercially and to be responsible to Parliament, but this is not what is happening here. This is not the situation that faces us.

**Mr. Vaughan:** Really, senator, with due respect, and I respect your views but I think you really take me beyond my call here.

**Senator Grosart:** I only want you to speak from the point of view of the system, not the politics.

**Mr. Vaughan:** I know that honorable senators will indulge me in this, that I would not care to engage here in discussion as to whether or not a system is good as related to that broad general question. There are points however that would bear consideration.

**Senator Grosart:** Can I ask one further question? Does it still make sense to have Air Canada tied in this way to the operation of the system?

**Mr. Vaughan:** My only comment on that is—when you say “tied”—and I preface my remarks by saying that I am an Air Canada officer as well, and Mr. Laing, Assistant Vice President, Air Canada, is here, and Mr. Macdougall is associated with Air Canada affairs. I could say that the reason

for this developed because Air Canada, while in a technical, legal sense, is a wholly owned subsidiary of Canadian National, has for all practical purposes its own management. It submits its capital budget to Government; it submits its own annual report to Parliament. Its president appears before a parliamentary committee, and my comment is that there really is not any inhibition, as I see it, on Air Canada through this method. The reason that it developed in this way was that Canadian National acted as the banker for Air Canada because in the early stages of Air Canada's development its financing was but a fraction of the Canadian National requirements.

But the situation now is changing. You see in this bill that there is no borrowing on the C.N. side but Air Canada does have requirements. And as it goes on into the future, with airplane development and acquisitions, then there are going to be more financing arrangements that will have to be worked out.

But I know to which element you are referring, and I would like, with your indulgence, to leave it on this point, that the particular matter of the financing arrangements which must be worked out vis-a-vis Air Canada's capital acquisitions over the next few years is now under active consideration between the company and the Government, and I would hope that some sensible system will be devised.

**Senator Grosart:** But, Mr. Vaughan, is there any compelling reason from the corporate viewpoint of either company why Air Canada should not operate as a separate Crown corporation?

**Mr. Vaughan:** Well, it does in all respects. It is a corporation, you know, incorporated by statute.

**Senator Grosart:** Let me say, then, as a corporation unaffiliated—to use the term in the act.

**The Chairman:** In other words, why should the present connection, whatever it may be, not be severed so that they would be two separate Crown corporations?

**Mr. Vaughan:** Yes, I see that point.

**Senator Grosart:** I am asking; is there a compelling corporate reason? I am not asking you to discuss policies.

**Mr. Vaughan:** I do not wish to discuss policies, because, as you know; these matters are under consideration at the moment. But there



are benefits to the two corporations being affiliated, and Air Canada's senior officers would be the first to admit that in many respects. But I did say, and I think it is fair to say—and Mr. Laing, if he wishes to, might make a comment on that—that I do not consider any inhibitions on the Air Canada management resulting from the affiliation.

But the point you are making—and I have read about it in the *Financial Post* and elsewhere—is a matter that is now under active consideration and debate. As I say, it is a matter that is current at the moment.

**The Chairman:** Are there any other questions?

**Senator Vien:** Mr. Chairman, I think that the company has submitted a very satisfactory submission in support of this bill which tends to obtain certain powers according to the normal method followed from year to year.

The Canadian National Railways and Air Canada are two great national assets of which we are all very proud and from which we have all benefited very largely. They have been a substantial and powerful factor in the growth of the Canadian nation, and without them we would not have accomplished so much as we have in the last 100 years, and more particularly in the last 50 years during which time both systems have been in operation.

Both of these systems are national assets, but the time may come—perhaps it has already come—when there should be greater competition between the air lines in Canada, with a view to giving greater service to the public. After all, these are public utilities created for the purpose of serving the public. In any event, I am quite sure that in the near future it will become necessary to allow increased competition in air services. At the same time, it may also be necessary not to allow one corporation to become gigantic in all fields. Perhaps when that moment comes it might be wise for Air Canada to fly on its own wings, without counting on the Canadian National.

However, to this day I believe it has been of immense benefit, both for the two companies and for the Canadian people at large, that they have been co-ordinated, for it has helped them substantially in their beginnings, enabling them to overcome the disabilities of a first period of establishment.

I recall that I was in Parliament in 1936 when the hon. C. D. Howe introduced that bill, and at that time it was thought we could have Air Canada as a separate entity. As a matter of fact, we offered 50 per cent ownership in Air Canada—at that time of course it was known as Trans Canada Air Lines—to the Canadian Pacific Railways, but they flatly turned the offer down, stating that it would always be a deficit and a drag on the country.

Well, I would say that we have proved that Air Canada is a great asset to the country today and that it should continue to grow and give greater services from day to day. We have been extremely fortunate in this country to have had such able management in charge of Air Canada and the Canadian National Railways, who have given their best to make them a success.

I was interested in hearing the story of these deficient companies that had been grouped together to make the Canadian National Railways System. I was on the Board of Railway Commissioners when Sir Henry Thornton tried to reconcile the various views of the Canadian Northern Railways, the Intercontinental Railway and the Canadian Government railways and so on, all of which had been living within the corporate entity of the particular section of the system. They continued, when they were joined in the national system, to have their own views of the importance of their particular districts and sections, and they had also in the back of their mind that one day, sooner or later, the Canadian National Railways would give back to these various sections the corporate entity and would allow them to prosper on their own. But it was not thought feasible to do that, and it would have been a serious mistake to do so.

The Canadian National Railways, therefore, has had great success through its very efficient management, and like it so has Air Canada. I think we should all be very proud of the fact.

This morning we have had a remarkable submission concerning these powers, which are normal. So far as I am concerned, if the committee is ready, I will move that we adopt the bill.

**The Chairman:** Thank you, Senator Vien. Is there any further discussion on the matter?

**Senator Fournier (Madawaska-Restigouche):** Could we take half a minute to have a word on the future of the turbo, or is that a secret?

**Mr. Vaughan:** Well, the turbo train which you see on the cover of this annual report is a new concept. It was designed by United Aircraft Corporation of the United States. The train engines are being built, and have been designed by, United Aircraft Company of Canada at Longueuil near Montreal. The train itself is being constructed in Montreal by the Montreal Locomotive Works. We have ordered five trains, not on a purchase basis because it was a new concept, but on a lease arrangement with United Aircraft Corporation of Canada. These trains should be in operation in 1968. There has been some delay in the construction of the trains and the principal reason was that the prototype train being built by the American authorities in Chicago became delayed through shortages of materials, and so on, and also through some matters of design they wished to correct. But the program is going forward. The first train is out of Montreal Locomotive Works and is now being tested. We hope and expect that

the deliveries will come along in 1968, and we are convinced from the engineering discussions that have been going on that it is going to be a very fine train, but as with anything else involving a new concept there have to be many tests made, and so far they have proven that the concept is firm and sound.

**The Chairman:** Any further discussion? Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**Mr. Vaughan:** Mr. Chairman, Senators, we thank you very much for your kind attention and the interested hearing you gave us. We look forward to seeing you again, and we wish you all the best for the Holiday season.

**The Chairman:** Thank you, Mr. Vaughan. We reciprocate your good wishes and we look forward to seeing you again.

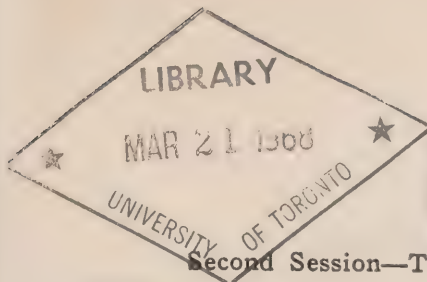
The committee adjourned.

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Second Session—Twenty-seventh Parliament

1967-68

# THE SENATE OF CANADA

## PROCEEDINGS

### OF THE

### STANDING COMMITTEE ON

# TRANSPORT AND COMMUNICATIONS

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The Honourable T. D'ARCY LEONARD, *Chairman*

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No. 6

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*Complete Proceedings on Bills S-33 and C-163,*

intituled:

“An Act respecting The Bonaventure and Gaspé Telephone Company, Limited”.

“An Act to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions”.

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TUESDAY, FEBRUARY 20, 1968

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WITNESSES:

**BILL S-33:**

Honourable Senator Langlois, Sponsor; John G. Porteous, Q.C., Counsel; Jacques Fortier, Counsel, Dept. of Transport.

**BILL C-163:**

The Honourable Judy LaMarsh, Secretary of State; G. G. E. Steele, Under Secretary of State; D. Sim, Member, Board of Broadcast Governors; Dr. Andrew Stewart, Chairman of the Board of Broadcast Governors; W. A. Caton, Controller, Radio Regulations Division, Dept. of Transport; Dr. George F. Davidson, President, Canadian Broadcasting Corporation.

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## REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable T. D'Arcy Leonard, *Chairman*  
The Honourable Senators

Aird,	Lang,
Aseltine,	Lefrançois,
Beaubien ( <i>Provencher</i> ),	Leonard,
Bourget,	McCutcheon,
Burchill,	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thompson,
Hollett,	Thorvaldson,
Isnor,	Vien,
Kickham,	Welch,
Kinley,	Willis—(45).
Kinnear,	

*Ex officio members:* Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 1, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill S-33, intituled: "An Act respecting The Bonaventure and Gaspé Telephone Company, Limited", be read the second time.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 15, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Davey, seconded by the Honourable Senator Kinnear, for second reading of the Bill C-163, intituled: "An Act to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Davey moved, seconded by the Honourable Senator Urquhart, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

TUESDAY, February 20, 1968.

(6)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

*Present:* The Honourable Senators Leonard (*Chairman*), Bourget, Burchill, Connolly (*Ottawa West*), Connolly (*Halifax North*), Croll, Davey, Gélinas, Haig, Hollett, Lefrançois, McCutcheon, McDonald, McElman, McGrand, Méthot, Paterson, Pearson, Power, Quart, Rattenbury, Roebuck, Smith (*Queens-Shelburne*), Thompson and Willis—(25).

### *In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll, it was resolved to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill S-33, "An Act respecting The Bonaventure and Gaspé Telephone Company, Limited", was read and considered.

The following were heard:

Honourable Senator Langlois, sponsor.

John G. Porteous, Q.C., counsel.

Jacques Fortier, Counsel, Dept. of Transport.

On motion of the Honourable Senator Croll, it was resolved to report the Bill without amendment.

Bill C-163, "An Act to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions", was read and considered clause by clause.

The following were heard:

The Honourable Judy LaMarsh, Secretary of State.

G. G. E. Steele, Under Secretary of State.

D. Sim, Member, Board of Broadcast Governors.

Dr. Andrew Stewart, Chairman of the Board of Broadcast Governors.

W. A. Caton, Controller, Radio Regulations Division, Dept. of Transport.

Dr. George F. Davidson, President, Canadian Broadcasting Corporation.

### MOTIONS:

(Full text of the following motions will be found by reference to the evidence herein.)

The Honourable Senator Flynn moved that clause 2(i) be deleted.

The question being put, the Committee divided as follows:

YEAS—4

NAYS—12

Motion lost.

The Honourable Senator Flynn moved an amendment to clause 2(i).

The question being put, the Committee divided as follows:

YEAS—4

NAYS—9

Motion lost.

The Honourable Senator Flynn moved an amendment to clause 16(1) (b) (i).

The question being put, the Committee divided as follows:

YEAS—3

NAYS—10

Motion lost.

The Honourable Senator McCutcheon moved an amendment to clause 28(1).

The question being put, the Committee divided as follows:

YEAS—3

NAYS—10

Motion lost.

On motion duly put, it was resolved to report the Bill without amendment; on division.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,  
*Assistant Chief, Committee Branch.*

## REPORTS OF THE COMMITTEE

TUESDAY, February 20, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill S-33, intituled: "An Act respecting The Bonaventure and Gaspé Telephone Company, Limited", has in obedience to the order of reference of February 1st, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*

TUESDAY, February 20, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-163, intituled: "An Act to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions", has in obedience to the order of reference of February 15th, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*





## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS EVIDENCE

Ottawa, Tuesday, February 20, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill S-33, respecting The Bonaventure and Gaspé Telephone Company, Limited, met this day at 9.30 a.m. to give consideration to the bill.

**Senator T. D'Arcy Leonard (Chairman)** in the Chair.

**The Chairman:** Honourable senators, it is now 9.30 and we have a quorum.

Two bills have been referred to us for consideration, namely, Bill S-33, respecting The Bonaventure and Gaspé Telephone Company, Limited, and the other is Bill C-163, the very important broadcasting bill. The Secretary of State and other witnesses will appear before us in respect of Bill C-163. As Bill S-33 is a private bill, and our proceedings on it may not be too protracted, I suggest that we proceed with its consideration first.

May I have the usual motion with respect to the reporting and the printing of the proceedings of the committee on this bill. This is a bill that originates in the Senate.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The sponsor of Bill S-33 is Senator Langlois, and I believe he has some witnesses here in support of the bill. Mr. Fortier, the legal counsel for the Department of Transport is also present.

Senator Langlois, would you like to introduce this measure to the committee?

**Senator Langlois:** Mr. Chairman and honourable senators, when I introduced this bill in the Senate at the beginning of the month I

said that its purpose was to resolve doubts as to whether the Bonaventure and Gaspé Telephone Company may dispose of its undertaking to a company incorporated under the laws of a province.

The Bonaventure and Gaspé Telephone Company, Limited was incorporated under federal law, and the majority of its stock—98 point something per cent—was purchased in 1956 by the Quebec Telephone Company. Ever since then and for all practical purposes the activities of the two companies have been joined under a common management. This company operates exclusively within the limits of the Province of Quebec, and the district it serves is completely surrounded by that served by the Quebec Telephone Company.

The company is contemplating improvements to its system. I should add, for your enlightenment, that this telephone system is a global one, and it has become necessary to improve it and bring it up to the standards of telephone systems operating in urban centres. To achieve this purpose the company will need some financing, which financing will have to be supported by the Quebec Telephone Company.

Quebec Telephone, then, is desirous of acquiring the assets of the Bonaventure and Gaspé Telephone Company, Limited, and since, as I said at the outset of these remarks, there is a doubt as to the ability of the company to sell this system, which comes under federal jurisdiction, to a company which is incorporated under the laws of the Province of Quebec, it has been deemed prudent, to say the least, to have the situation clarified, and to come before the federal Parliament in order to have this doubt resolved.

I have with me this morning Mr. John Porteous from Montreal, counsel for the Bonaventure and Gaspé Telephone Company Limited; Mr. Norman Gendreau, the second vice-president and treasurer of the company, and Mr.

Côté the secretary of the company. I am sure these gentlemen would be only too pleased to add any further information which honourable senators may desire to obtain. That is all I want to say by way of opening remarks. I am your entire disposal to answer questions you may wish to put.

**The Chairman:** Mr. Porteous, we are glad to have you here, and the committee would like to hear from you.

**Mr. John G. Porteous, Q.C., Counsel, The Bonaventure and Gaspé Telephone Company Limited:** I find it difficult, honourable senators, to follow Senator Langlois, because I think his exposé was so clear and to the point. We are a small company, having some 14,000 telephones in service compared with the Quebec Telephone Company which has about 112,000. For many years it has been operated practically as part of the Quebec Telephone Company. In order to avoid endless expenses, which run into many thousands of dollars a year, a great deal of extra book-keeping, and so on, we would like to transfer the assets of the Bonaventure and Gaspé Telephone Company undertaking to the Quebec Telephone Company, so that what is now being done can be done, perhaps I might say, legally. At the moment all the people working for the Bonaventure and Gaspé Telephone Company are employed by the Quebec Telephone Company for two reasons, namely to provide an opportunity for advancement in seniority and for better use of working crews. This bill will have no effect on the labour force.

The Quebec Telephone Company has, in the last five years, invested some \$7 million or \$8 million in a construction program, and there is a construction program of some \$9 million for the current five-year period. If the Bonaventure and Gaspé Telephone Company assets form part of the same undertaking, the Quebec Telephone Company will be able to finance it better, have better security and a better bond, and it will be easier to market. That is one of the secondary reasons why we want to transfer the assets of the Bonaventure undertaking, apart from avoiding expense.

**Senator Paterson:** Are the shareholders the same in both companies?

**Mr. Porteous:** There are four shares outstanding out of about 44,000. These four shares belong to an estate in Detroit which

has accepted an offer for their shares. There are some transfer tax problems which have not been cleared up. We made an offer considerably in excess of the book value of the shares and that offer has been accepted.

The company was originally formed by residents and was rather a haywire arrangement. They had only \$100,000 and they refused to borrow, and the 120 miles of telephone line divided into the \$100,000 did not go very far.

**Senator Paterson:** Can you legally be taken over by the Quebec Telephone Company without those shareholders?

**Mr. Porteous:** We could sell the assets and divide up the proceeds, but the offer made for the four shares is larger than we think would be a fair price. It saves costs by paying more for the four shares.

**Senator Paterson:** Have you given a time limit to the Bonaventure shareholders?

**Mr. Porteous:** There are four shares.

**Senator Paterson:** Only four?

**Mr. Porteous:** Yes, four out of 44,000. It is one shareholder holding four shares.

**Senator Paterson:** I did not understand that.

**Senator Pearson:** There is no bond issue outstanding?

**Mr. Porteous:** No, it was all owned by the Quebec Telephone Company. There was a \$100,000 bond issue which was retired last year.

**The Chairman:** Are there any other questions of Mr. Porteous?

I might say that I have the opinion of our Law Clerk and Parliamentary Counsel to this effect:

In my opinion this bill is in proper legal form.

If there are no further questions you want to put to Mr. Porteous, Mr. Fortier would like to speak to you. Mr. Fortier is counsel for the Department of Transport, and this telephone company, in so far as it was under dominion jurisdiction, was under the jurisdiction of the Department of Transport.

**Mr. Jacques Fortier, Counsel, Department of Transport:** Mr. Chairman, honourable senators, I must inform the members of this



committee that the Minister of Transport has no objection to this bill, but we would like to point out that if the undertaking of the Bonaventure and Gaspé Telephone Company is disposed of in favour of a provincially incorporated company, the undertaking would be removed from federal jurisdiction and from the jurisdiction of the Canadian Transport Commission with respect to rates. However, it is noted that section 11 of this bill is identical with section 11 of the company statute as amended in 1955. The only amendment is the addition of the last six lines in section 11, which is simply to clarify the right of the company to dispose of its undertaking to any other company whether incorporated under federal jurisdiction or under provincial jurisdiction.

**The Chairman:** Are there any questions to be directed to Mr. Fortier?

**Senator Hollett:** I notice that section 11 says:

no such sale or disposal shall be made until it is approved by a meeting of shareholders duly called for that purpose.

Has that been done?

**Mr. Fortier:** That is not new, senator. That provision was already in section 11 as passed and amended.

**Senator Hollett:** But has it been done now with reference to this matter?

**The Chairman:** Perhaps, Mr. Porteous should answer that.

**Mr. Porteous:** No, we have not called any meeting. We doubted whether we had authority to sell, so we did not ask our shareholders to approve it. We will have a shareholders' meeting.

**Senator Hollett:** I understand.

**Senator Langlois:** To clarify the situation, I might add that this will have to be approved by the Transport Commission, which I hope will see that the law is complied with.

**Senator Croll:** It is a little difficult for me to conceive how the legislative authority of the Parliament of Canada would come into question.

**Mr. Porteous:** In the sale? We have asked for authority to sell to anybody whether governed by the laws of Canada as opposed to the laws of Quebec. The former chairman of the Board of Transport Commissioners had

some doubt whether the law allowed a sale to a Quebec company, which is within the legislative authority of Quebec.

**The Chairman:** I think the question really was that possibly this federal company could only sell to another federal company. This bill makes it clear that they can sell to a company which is not within the federal legislative authority.

**Mr. Porteous:** The question has never been raised. For instance, the Bell Telephone Company in Quebec has bought a dozen Quebec companies, the control of the companies has passed from the public service board, the Board of Transport Commissioners, and nobody ever raised the point. The point was raised by the Chairman of the then Board of Transport Commissioners, and he resolved the doubt before you.

As far as rates are concerned, the residential rates in Bonaventure and Gaspé is \$4.90 for a telephone, as against the Quebec Telephone, \$4.80. The business rate is slightly different; but the parallel is drawn, for all intents and purposes. The Quebec Telephone is, of course, subject to the Quebec Public Service Board, for the fixing of rates. It has recently been before the board, to make changes.

**Senator Croll:** I move that the bill be reported without amendment.

**Hon. Senators:** Agreed.

**The Chairman:** Thank you Mr. Porteous.

—The Committee proceeded to the next order of business.

Ottawa, Tuesday, February 20, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill C-163, to implement a broadcasting policy for Canada, to amend the Radio Act in consequence thereof and to enact other consequential and related provisions, met this day at 10 a.m. to give consideration to the bill.

**The Chairman:** Honourable senators, the Senate has referred to us Bill C-163, to be known as the Broadcasting Act. This bill was sponsored on second reading by Senator Davey. Shall we have the usual order as to the printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

**The Chairman:** There has been distributed to you a memorandum prepared by the Canadian Association of Broadcasters. This came to the chairman on behalf on Mr. T. J. Allard, Executive Vice-President of the association. There was also a larger or longer memorandum received from the association, which was put into the mail boxes of senators.

Mr. Allard, however, did not wish to appear before the committee or was unable to appear. At any rate I call these memoranda to your attention so that you may give them consideration.

We are very glad to welcome this morning the Honourable Miss Judy LaMarsh, Secretary of State, under whose jurisdiction this bill comes. She has with her the Under Secretary of State, Mr. George Steele. We have also Dr. George Davidson, President of the Canadian Broadcasting Corporation; Mr. James Gilmore, Vice-President and Mr. Ronald Fraser, Vice-President, Canadian Broadcasting Corporation; Dr. Andrew Stewart, Chairman of the Board of Broadcast Governors; Mr. Pierre Juneau, Vice-Chairman; and Mr. David Sim, a member of the board.

Shall we act in the usual way and ask the minister to make a statement at this time?

**Hon. Senators:** Agreed.

**The Honourable Judy LaMarsh, Secretary of State of Canada:** Mr. Chairman, ladies and gentlemen, there is sort of an air of unreality this morning. If I am a little amazed, perhaps you will understand in the circumstances. Incidentally, I do not know who is keeping the store at the C.B.C. and B.B.G. this morning, with all these illustrious gentlemen here. Perhaps my general remarks will be shorter because I know that you have the fount of all wisdom at hand.

As senators know, we are here to discuss Bill C-163. I know my former colleague has handled the bill before you already in most exemplary fashion. I have had the opportunity of reading *Hansard*, and I would like to thank him for his help to this point.

As you know, the bill has been studied and has had, prior to bill form, a great deal of study in the other place and has had a great deal of public discussion. There was an exhaustive—perhaps it might be called exhausting—discussion in the lower chamber whence it finally came to you.

Because there has been so much discussion elsewhere, I propose not to make too lengthy a statement this morning, after which perhaps I could answer any questions you might wish to put.

It seems to me that whenever we talk about broadcasting we readily, as do members of the public, begin to talk about programming, and, especially—we often forget that the whole of the broadcasting apparatus is concerned, both public and private—we zero in, as it were, on programming of the public corporation with respect to the national broadcasting service.

I know it is a subject of considerable interest and also from time to time a frustration for both members and senators, but we feel a sense of responsibility to the CBC, about which many of us receive a very considerable volume of mail and with whose estimates we must deal every year. We receive much criticism and much public comment with respect to it. On the other hand, I think that members of both chambers have indicated more than once, and most firmly, that they wished to respect the continued essential independence of the corporation. Thus, whenever there is any talk of control, we have to realize that we must be very careful in the area of programming. While we should be able to voice our comments and criticisms, we may not put ourselves in position to ensure directly that they be heard by those involved in the management of the corporation.

It seems to me that senators have every right to voice their criticisms of the CBC. After all, a great deal of money is spent every year, and people send us, one way or another, to this building in order to be answerable for the money that is spent on the CBC as well as on other public corporations.

It seems to me that that should mean that the corporation would welcome informative comments from parliamentarians, because the representatives of all Canadians, whether elected or appointed, should be in a position to reflect the moods and attitudes of Canada towards the national broadcasting service in a very special way and in a way perhaps no other corporation in the world—or at least



North America—has of testing the acceptability of its programming. I do not think the CBC should bend to every criticism—especially when you realize that the criticisms for the main in the program field are always *ex post facto*, and not very much can be done about a program after it has gone over the air. But I think that it should be responsive to the over-all trend of such comment as reflects the will of the public—and the will of the public as a whole.

I do not think we can do any more than that in the Parliament. We can try to lay down general guidelines as to the kind of broadcasting system we want, and that has been attempted, particularly in clause 2 of this bill. We can use the regular opportunities that arise to express our views as to how the components of the system are living up to our expectations. Indeed, I would like to hear more public comment in both chambers on the programming and the effectiveness of CTV and non-affiliated private institutions.

I think we have to seek to appoint to the management of the CBC as well as to the regulatory agency people having the best qualifications we can find to take jobs which are very sensitive and very difficult and which, by their very nature, almost set up the individuals as targets for public controversy.

With the new management of the CBC sitting here, it is all right to say that. After he has been appointed, you can tell him he is going to be a target, but I think Dr. Davidson already had that idea before he was appointed.

In the case of management I think the two houses must always reserve the ultimate right to judge their performance. The public will judge it, and the two houses must judge it accordingly. But we cannot try to manage the corporation nor can we try to manage the regulatory functions. Very few of us in either chamber are experts in this highly complex field of broadcasting, and even those who have had some experience whether it be as an announcer or as a station owner do not find themselves with sufficient experience to be able to run the C.B.C. Even if that were the case I do not think that anyone in either house would want to see the system brought under political control, no matter what flavour of politics might be involved.

We follow a line which is quite different from that in France; it is the line between public broadcasting and State broadcasting

with a capital "S". It has been said since the beginning of broadcasting in this country that that is our Canadian method and that is what we have tried to carry out. So out of many ideas and great work and consultation with the public and private agencies interested in the field the bill has been produced which is now before you. It is an attempt to spell out in general terms the kind of broadcasting system the people of Canada want with the hope that, having spelt it out, we might be able to leave the detailed operations of the system where it belongs to the regulatory agency, to the management of C.B.C. and to private broadcasters.

Honourable senators, if I might pass to dealing with the bill itself. We have indicated that the key lies in clause 2. This took many days debate in the house, and I think interested senators who have had an opportunity of reading those debates will see that for the first time there has been an attempt to set down in general language the objectives of Canadian broadcasting. In subclauses (f) and (g) in particular—and again for the first time—it sets out the special mandate of our public broadcasting service. The system has been studied most recently in the Fowler Committee Report and again and again the comment has been made that the mandate has never been given in specific terms of legislation to either the regulatory body or to the public corporation in order that they might know what Parliament expects of them. This is an attempt to do that. The remainder of the bill, whether referring to the Canadian Radio-Television Commission or C.B.C., is simply concerned with the mechanism by which we expect clause 2 to be implemented.

Clause 2, subclause (h), was amended in the House of Commons and now reads:

where any conflict arises between the objectives of the national broadcasting service and the interests of the private element of the Canadian broadcasting system, it shall be resolved in the public interest but paramount consideration shall be given to the objectives of the national broadcasting service;

If I may, I should again underline the words which are particularly important "the objectives of the national broadcasting service" must prevail. That is as opposed to the interests of the private element of the Canadian broadcasting system. This is declared to be resolved necessarily in the public interest and with particular considera-

tion to the objectives of the service. I would ask honourable senators to notice particularly the words "service", "system", "objectives" and "interests".

The phrase "the national broadcasting service" in the bill does not mean just the C.B.C. and the physical assets owned by the corporation. Rather it is essentially a programming service which is and can be provided not only through the so-called owned and operated hardware of the C.B.C. but through the privately-owned affiliates as well. I think most senators will realize that much of the service carried on the private stations is carried privately but they have an agreement with C.B.C. to carry some parts of the national service. Those who envisage some sort of conflict arising out of this should remember that it is not correct to assume that the regulatory body must automatically favour a C.B.C.-owned station. All it does mean is that it shall give primary consideration to the national broadcasting system.

Again I would like to draw attention to the fact that subclause (g) deals with the responsibilities of the national service as opposed to the interests of the privately-owned stations. I would draw your attention to the fact that the subclause speaks of the "objectives of the national broadcasting service" as compared with the "interests of the private element." The objectives are precisely those set out in this bill, particularly in subclause (g) and they represent the views not simply of the C.B.C. management but of Parliament itself and that is why they are given primary consideration. I might add too that whether these objectives really are at issue in any conflict will be a decision to be made not by the C.B.C. but by the regulatory agency whose job it will be to adjudicate any such dispute. Thus this subclause does not stack the deck in favour of any C.B.C. management of the day; what it does is to give priority to the special objectives of our national broadcasting service as established by Parliament itself.

Another matter which has been the subject of considerable debate in the house is the position of the community antenna systems—CATV—under this bill. About all the bill does, in reality, is to bring these systems within the ambit of the overall broadcasting system and thus under the supervision of the regulatory agency by including subclause (d) of the definitions "a broadcasting receiving undertaking" as one of the things that constitute a broadcasting undertaking to be licensed under this legislation. Again from the

representations that many of the members of the committee are receiving this might be a matter of some concern to honourable senators.

We realize of course that CATV systems are basically different from other broadcasting undertakings; they do not originate programs but merely deliver to subscribers program services originated by other stations. The C.R.-T.C. would take this into account in drafting their regulations, and in this regard I would imagine that such regulations relating to CATV would differ from their usual regulations. But it is clear, too, that the operations of CATV can and often do have a very real effect on broadcasting services in any given area, and that in that sense they are very much a part of the Canadian broadcasting system.

I could give a number of examples of the effects of the CATV system on other elements in the system. There are cases where the development or the presence of a CATV system could well inhibit the development of local broadcasting service in the area. Many members of the House of Commons said "What difference does that make?" They asked "Why shouldn't they have equal right to this and to use the facilities as a broadcasting undertaking?" They also have said that we should let the public watch whatever they can get on CATV. But it seems to me that in Parliament we must be concerned, particularly if we are going to spend public money on such services in this country, that Canadians should have access to Canadian television and, more than that, they have wherever possible locally originated services both to serve their own community and to contribute through the networks to the national broadcasting service. After all it isn't sufficient just to have the C.B.C. emanating out of Montreal and Toronto. There should also be local services whether provided by the local affiliates of the national system in some cases or by the CATV system. In many cases to allow a CATV system to become established in a limited market would rule out the establishment of any local Canadian service. And I do not think, and I am sure many honourable senators will agree with me, that this would be in the best interests of a Canadian broadcasting service.

There is no intent to cut out American services or anything of this kind, but there is an intent that, where possible, Canadian original services should be fostered and that where



they exist they should be available to the local individual who is receiving programs.

I understand that some special representations have been made from CATV operators to senators in regard to clause 28 of the bill as it applies what will now become a 24-hour ban on political broadcasting prior to an election. The argument that CATV operators put forward is that since they are only passing along programs and not originating them, and they have no control over them, it is very unfair for this legislation to require them to be responsible for possible violations of this provision within the programming they are carrying.

**Senator McCutcheon:** Are they not prohibited under regulations from altering any program they receive?

**Hon. Miss LaMarsh:** Yes.

**Senator McCutcheon:** So, on one side you are saying, "You must not do this"; and, on the other side, you are saying, "You must do this."

**Hon. Miss LaMarsh:** They are prohibited from interfering with the integrity of the programs; and the reason is, of course, that if this were not done CATV operators could, and no doubt would, drop national advertising and sponsors who are creating and paying for the shows, and would insert local advertisers and this would not be permitted. This is not a very big problem. They talk about it as though it is, but, in fact, it is not very important.

When you talk about programming coming in from the United States to Canada, that cannot happen any more because it is against the Canada Elections Act.

**Senator McCutcheon:** The Canada Elections Act, surely, does not apply to stations in Buffalo, for instance?

**Hon. Miss LaMarsh:** Yes, it does. It says that no person or agent on behalf of that person may broadcast, and the individual who is running suffers the penalties if it is done.

**Senator McCutcheon:** That is true, but that still does not make it a matter for WBEN to accept?

**Hon. Miss LaMarsh:** No, but it makes it an offence for the member or individual running to have it happen. To suggest any one would go and buy the very expensive time when the

effect it would have would be to deprive the individual of his seat, seems to me to be stretching the point.

**Senator McCutcheon:** If it is that simple, why do we not make it clear by an amending section of the bill?

**Hon. Miss LaMarsh:** It is not that clear, because we are talking not just about an American station. With respect to Canadian stations it is not difficult. Operators in manned stations may shut off a channel at any time. It should be realized these things do not extend over a very long distance. It seems to me a very simple thing for a person operating a CATV system to simply indicate to the resident operator of the stations that are going to have a program that is banned, in effect, and this may be applicable to other places and you notify them of this, that it is going to happen. Television stations know quite well in advance when they are going to have political broadcasts and it is an easy thing to push a button and to turn off a channel. This is not really a very difficult kind of thing to do. There can be the type of station which is not operated by a man, which is automatic; but this is an agency which is in business for itself to make a profit, and if you drop the CATV out of this, then you have opened a hole big enough to drive a truck through, and there is no point at all in that, because anyone can then use CATV to circumvent the regulations with respect to prohibitions before elections.

**Senator McCutcheon:** You have already told me you are going to throw the candidate out if that happened. Your sanctions are still there against the individual.

**Hon. Miss LaMarsh:** Yes, who is using American stations.

**Senator McCutcheon:** Your sanctions are still there against such an individual.

**Hon. Miss LaMarsh:** I do not think anybody any more uses American stations, because it is very expensive and they know they cannot. But it does not mean, with an election in Kingston, for instance, CATV could not carry it to Ottawa unless it were shut off; but it cannot be permitted.

**Senator McCutcheon:** You are suggesting they must monitor all programs?

**Hon. Miss LaMarsh:** No, I am suggesting they must monitor political broadcasts which

would offend against this particular section; and, in point of time this is very little.

**Senator McCutcheon:** We have a lot of elections these days!

**Hon. Miss LaMarsh:** I think probably one less than you are anticipating, senator!

**Senator McCutcheon:** Sorry, Mr. Chairman.

**Hon. Miss LaMarsh:** Then I would like to make one other point—and, certainly, I am sure honourable senators will ask the technical people and representatives from the agency about this matter.

I would like to have it made very clear, because when it was raised at a very late date in the House of Commons, considering the source by which it was raised, it seemed to me it would take more time than it would be worth, and that before reasonable people I would have an opportunity to have this discussion here.

One other point I would like to make. In clause 2(c) there is a statement that:

all persons licensed to carry on broadcasting undertakings have a responsibility for the public effects of the programs they broadcast...

That will include CATV operators. They have to accept the responsibility for the programs carried by their system. This is not talking about liability for libel or slander actions, the Broadcasting Act does not deal with this, and the general law makes them liable for anything they carry over their system. If something is subsequently found to be libel, they cannot escape the responsibility by saying they are merely a conduit pipe. They have published over the media, and the law says they are responsible. So, the Broadcasting Act puts some degree of responsibility upon them. They are not a public corporation or anything in the nature of a utility; they are, in fact providing entertainment for gain. While we have to realize that the CATV system is different and they are not originating whatever program is broadcast, I do not believe it should be suggested there is no responsibility whatever for what goes out of their system. You pretty well have to have all or nothing when you are talking of including them in the system, and I think to exempt CATV from clause 28 would be to do precisely that, to relieve them of the responsibility for what is passing through the air and into the home, and I think it would

have serious implications for the broadcasting system as a whole.

Now, the Canadian Radio-Television Commission, which will supersede the B.B.C. and which has passed through a number of suggested name changes, is to be composed of five full-time and ten part-time members. The five full-time members, who will constitute the executive committee, are to exercise the commission's power in regard to licensing, although the bill provides they have to consult with the part-time members before making any decision, and this obviously is to make sure the part-time members who reflect the opinions of the country, while the five full-time members who reflect specific skills relating to the effect of regulation—that with consultation they will have the advice of local opinion throughout the country. The part-time members, as well as this consultative role in licensing matters, will have a full vote in decisions involving recommendations of the executive committee which deal with general regulations and, most importantly, the revocation of licenses. So, we are not creating five broadcasting czars who will be able to run the system on their own.

We have worked for a long time trying to create a system of checks and balances, and putting the power and responsibility in the proper place. We think that this division of powers and responsibilities is a sensible one.

As to the make-up of the commission, as I say, I hope that the full-time members, when they are appointed, will have some expert knowledge of broadcasting, or of one or more phases of it. One might suggest that because they are full-time they are something like judges, and they will be less susceptible to political and other pressures. Of course, that will not necessarily follow, but one hopes it will. The crucial powers in terms of issuing, amending or suspending licences will be left to them as public servants. The part-time members, or the ones who are less expert and more representative of the public at large, will be able to bring that interest to bear on matters of general regulation in a consultative way in the matter of licensing.

There were some questions in the house in regard to public hearings by the Commission, as set out in clause 19, and there was a long discussion on clause 19(2) which contains the stipulation that a hearing will be held in respect of an amendment of a broadcasting licence if in the view of the executive committee such a hearing seems to be in the



public interest. There were many arguments raised, especially in view of the public controversy that arose over the proposed movement of Channel 3 at Barrie to Toronto, that this procedure will enable the executive committee to deal with such a matter as that free from public scrutiny, and free from any public representation.

I have to draw your attention to the fact that this bill was drawn after that controversy, and it is an attempt to get around any such possibility. Clause 20 requires that the commission shall give public notice of any licence application before it. This would apply to such a thing as the Channel 3 situation.

This means that the commission will not be able to deal with any licensing matter, whether it is a new licence, an amendment to an existing licence, or the renewal of a licence, without the public knowing about it, because there has to be this public notice. It does not seem to me that the commission would under such a situation fail to call a public hearing if the public interest demanded it. I might note further that even if that was the case there is additional protection in clause 23 which gives the Governor General in Council authority in respect of a licensing matter.

I would have preferred, as was originally contemplated in the White Paper, that the Governor in Council did not have that authority, and that the matter be left to the regulatory body, but the Government of the day, as honourable senators realize, is ultimately held accountable by the public whether or not it is accountable, and whether or not it has the right to make these decisions. Accordingly, since it is going to be held accountable anyway, it was thought that in order to reverse decisions should there ever be any decisions coming from the C.R.T.C. that needed reversing, then that should be within the power of the cabinet. Therefore, that authority which exists to some extent already has been placed in the new act.

Under the new act the Governor in Council can either refer the matter back to the commission for further consideration, or set the commission's decision aside. There does not seem to be any real way by which the commission could deal with any licensing matter in an underhanded fashion, even if it wanted to. I really believe that the people you place in such public corporations on a permanent basis do not go in there with a view of trying to play hanky-panky. They have as high a

view of public service as I know the members of both chambers have.

Part III of the bill deals with the Canadian Broadcasting Corporation, and there is relatively little change from the current act. The major change which was originally contemplated was deleted from the bill. I am referring to two clauses which dealt with long-term financing for the corporation. Those were withdrawn from the bill in the House of Commons. They were permissive clauses only, and would not of their own have afforded long-term financing to the C.B.C.

It was and is the Government's intention to introduce legislation to provide a form of statutory financing for the corporation over a period of years. That has been recommended by the last several groups which have studied the corporation and broadcasting in general, and it has been recommended by, I think, every group that has been interested in public broadcasting and, indeed, I think at the time of the recommendation there was no dissenting editorial opinion.

It is a matter of some difficulty for the public corporation to have to finance on a fiscal year basis without being able to project into the future. It is competing with giant American corporations that are able, as are most businesses, to project over a much longer period than one year. There is now considerable public discussion as to whether or not the C.B.C. should be, to use the term of some, unfettered to a degree, and that long-term financing for three or five years should be provided for. But, even if, as, and when the bill is presented and discussed, and perhaps passed by both houses, this does not mean that the public corporation would then have three years, or five years, or ten years, or whatever the period of financing might be, of complete independence from Parliament.

The operating grants, we hope, will be fixed on a per capita or a per household formula. There is much really to commend itself in this. The C.B.C. currently prepares budgets, and while they have to fit generally within the framework of the Government's financing resources, there is no attempt to say: "This is the portion that we can afford to spend on a public corporation." It is hoped that if some formula can be arrived at, and whether it is a per capita formula or a per television-house formula, or something of this kind, or even something reflecting the amount of money which comes in from commercial supporters of various programs, it will be

fixed, and the corporation will be in a position to know over a period of time what money it will have to work with, and it will be able to cut its cloth accordingly. But, the grants themselves would be paid annually to the corporation, and they will appear in the annual estimates.

In that way, through the vehicle of the annual reports of both the C.B.C. and the regulatory authority, we think Parliament will be assured of an annual accounting of C.B.C. operations, and also the regular opportunity for scrutiny of them.

As I say, the financing bill would cover only operating grants. It would require the C.B.C. to produce a five-year capital program, but the capital funds themselves would continue to be voted on an annual basis.

The last few sections of the bill deal with consequential and related amendments and transitional measures. They are either highly technical or self-explanatory. I do not suggest that I am a technician in any degree with respect to these sections in particular. However, I would like to draw attention to clause 49(1)(b)(ii), which is a provision which permits the Governor in Council to make regulations to the effect that all future TV sets be capable of receiving UHF as well as VHF channels. This is of very special interest in Canada, because while there are lots of VHF channels available in some places they are almost completely taken up in other places where the population exists, or where the larger markets are. If we are going to have enough channels for educational television, and for all the many other uses of television—one of which might be the broadcasting or telecasting of the proceedings of both houses of Parliament—we are obviously going to have for the first time in this country to resort to the ultra high frequency channels. As you know, most sets now made in this country, or imported into this country, are not all-channel receivers. I am told that many of them that began in the States as all-channel receivers even have these facilities before they come into Canada. If the Governor in Council makes such a regulation it is contemplated that it will be some years before natural obsolescence will put everyone in the position of having an all-channel receiver. However, a start has to be made somewhere, and anyone who wishes to receive all programs which come on VHF, whether of the public service type or strictly commercial programs, could with the addition of some kind of converter box, which I am told will

cost \$25 to \$50, convert their own sets to receive VHF.

Those are the main points of the bill, the ones of contention. It is a very long piece of legislation and one that has to be read with care because the words have been weighed and used for a reason. It is the end of a long, long trail. I just hope that the end is not cut off in the next few days, in order that it does not have to be done all over again.

In my seven years in the other house no other piece of legislation with which I have been associated has had so many people involved in discussion back and forth. Dr. Stewart and his board and formerly Mr. Oumet and his board met many times and went over the White Paper helping to create it; they discussed it with us in private and subsequently before the House committee in public; they saw the bill and made their representations. We heard the Broadcasting League. The Canadian Association of Broadcasters worked very closely on it. We drew on the best brains in broadcasting in the country. As you know, the House committee also had a very valuable opportunity to speak to representatives of British television, both I.T.A. and the B.B.C.

I hope you will find that the bill is a sound framework. I do not think it will mean everybody will like every program they see on private and public television. No bill could achieve that. We have tried to do as much as we can in section 2. Television is the most exciting means of communications today and can be one of the strongest forces for unity in the country. When Mr. Bennett first introduced the provisions for public radio broadcasting in the country he indicated that that was one of the reasons why he wished to do so, to provide a strengthening and new-found force within the country. It seems to me that all our legislation ought to be aimed at that and I hope this bill will be found by the committee to hit the target.

**The Chairman:** Thank you very much Madam Minister. I am sure the minister will be glad to answer questions that may be in the minds of honourable senators. If there is more than one who wishes to ask questions I would ask for cooperation in having regard to the interests of other senators.

**Senator Paterson:** Is the minister of the opinion that it is a wise thing for Canada to own its own broadcasting?



**Hon. Miss LaMarsh:** I certainly think so. I am a strong supporter of public broadcasting. It would be very easy to have just American stations feeding into Canada, or private Canadian stations. There is an expert in the United States by the name of Fred Friendly, a great name throughout the world in television, who left a very lucrative position at which he earned about three times as much as Mr. Davidson for a much less onerous job, because he felt that American television, as he said, was paid so much to do its worst that it never bothered to do the good kind of television that it could do. By and large, unregulated television is what you get pouring over the American stations.

In this country we have no national newspapers, we have no national means of communication, we have nothing to tell us what the people in Vancouver, Nova Scotia or the Northwest Territories are thinking at the same time. Except for one relatively financially feeble national magazine we have no way of depicting to one another what our country is, and it seems to me that more and more public broadcasting, especially in the television field, is absolutely essential, it is one of the sinews we must have to hold the country together.

**Senator Flynn:** What are the substantial differences this bill introduces as far as the Canadian Radio and Television Commission is concerned in comparison with the present Board of Broadcast Governors and the Canadian Broadcasting Corporation?

**Hon. Miss LaMarsh:** The essential differences are these. So far as the C.B.C. is concerned, in section 2 we set out for the first time what Parliament expects of the C.B.C.

**Senator Flynn:** The policy?

**Hon. Miss LaMarsh:** Yes. Before this the C.B.C. was set up and, as it were, created its own mandate. This bill for the first time tells the C.B.C. what Parliament expects it to do, in general terms of course. Section 15 charges the regulatory authority with seeing that the C.B.C. lives up to that mandate. The regulatory authority is, of course, charged with other responsibilities so far as the system as a whole is concerned. Then again, it places CATV as a broadcasting undertaking under that regulatory authority. I think that is substantially it. It seems a lot of sounds and theory for not much, but that "not much" is the whole kernel.

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**Senator McCutcheon:** May we take it, Madam Minister, that Dr. Davidson, with his experience in implementing various facets of the recommendations of the Glassco Commission, will now start to apply those recommendations in the C.B.C., thereby releasing a large building in Ottawa for use by the Government for other purposes?

**Hon. Miss LaMarsh:** I did not catch the first couple of words. Did you say "Do I think"?

**Senator McCutcheon:** I am not certain whether I said that. Does Dr. Davidson have a mandate?

**Miss LaMarsh:** Dr. Davidson is appointed to manage the corporation. I have not given him a mandate. Perhaps when he is before the Senate you might ask him yourself, senator.

**Senator McCutcheon:** Thank you very much.

**Miss LaMarsh:** He could perhaps say more than I could.

**Senator Grosart:** Madam Minister, I wish to refer specifically if I may to section 2 (h). You discussed the authority given to the commission where there might be a conflict between the interests of the private stations and the objectives of the C.B.C. I believe you said that the word "objectives" refers back to paragraph (d), and in effect to the whole policy statement set out in section 2.

**Hon. Miss LaMarsh:** That is correct.

**Senator Grosart:** I wonder if you would have any objection to inserting the word "statutory" before the word "objectives". I suggest that because I can see a situation where there will be quite an argument as to whether what the C.B.C. wants to do at a particular time is an "objective" of the C.B.C. I would suggest that the word "statutory" would carry out your own interpretation of that section.

**Hon. Miss LaMarsh:** My under secretary tells me that the Department of Justice have told us that this is a declaratory section and you can only read the objectives in the context. I do not think there would be any objection to putting in the word "statutory" there, because that is what it means.

**Mr. Steele:** The legal opinion is that it would be unnecessary to add this word,

because this is the only way that word "objectives" can be read in the context of that section.

**Senator Grosart:** I do not want to dispute the opinion of the legal advisors, but it has not been the inevitable experience in the case of statutes that when the Department of Justice says it can only be read this way, that that has been the history of the wording. If the Minister is prepared to accept the word "statutory," I think it would make an improvement and make it clear and so avoid some disputes in the future.

**Hon. Miss LaMarsh:** The senator realizes that, especially civil servants, but also members of the Government get very sensitive about the pristine quality of reprinted bills. They do not like to see words added if they do not have to be. But I certainly do not think it would disturb the sense of the phrasing.

**Senator Grosart:** Would you accept an amendment to that effect?

**Hon. Miss LaMarsh:** It is not a matter of my accepting an amendment, it is a matter of what the Senate does.

**Senator Grosart:** I leave the matter in your hands. The minister has said she would have no objection.

**Hon. Miss LaMarsh:** The only thing I would like to say is that I do not know what would happen, if it has to go back to another chamber. There may not be a great deal of time, and I would like to see the five-year cycle finish.

**Senator McCutcheon:** You may not have another eleven days.

**Senator Grosart:** May I suggest to the minister that it is not the best argument in the world to say that the Senate should not make a change in this. That principle could apply to any legislation.

**Hon. Miss LaMarsh:** No, that is not it. This does not add anything or detract anything. I am suggesting that it is up to the Senate to decide.

**Senator Flynn:** May I ask a question about paragraph (i) of clause 2? It seems to me that the French version has not exactly the same meaning as the English version. The French version suggests that the commission should be "equipped" for educational broadcasting

only, whereas in English the suggestion is there that it is the responsibility of the system to deal with educational broadcasting. This is only as a preface. I want to ask the minister whether she thought it was essential to add those words, as far as this equipment is concerned.

However we would deal with this subparagraph, does she think that the corporation could not buy, could not acquire equipment, that could be used for educational broadcasting?

**Hon. Miss LaMarsh:** The word in English is "system" and you see that in French it is "la radiodiffusion canadienne". This is broadcasting, this is not the C.B.C., this is the whole system.

**Senator Flynn:** I know, but does the minister think that without this paragraph the system or the corporation could not acquire equipment for educational broadcasting?

**Hon. Miss LaMarsh:** It is not equipment in the sense of cameras and things of that nature; it is facilities, in the English sense.

**Senator Flynn:** But these are physical assets, are they not?

**Hon. Miss LaMarsh:** Simply remember, senator, that this bill deals with broadcasting in all its aspects. This is the only reference to a facility for ETV in the whole thing. There would be, I suggest, no right, there would be no place within the system then, for educational television as such.

**Senator Flynn:** If we do not have those words, you suggest you could not buy facilities or equipment for that purpose?

**Hon. Miss LaMarsh:** I suggest that it would not fall within the broadcasting system of the country, it would not fall under the regulatory agency, it would not be a part of it.

**Senator Flynn:** Could not the C.B.C., the Canadian Broadcasting System, or the private system buy all sorts of facilities or equipment?

**Hon. Miss LaMarsh:** I am not suggesting that. I think that, without that wording there, the C.B.C. could buy a camera to use in ETV. I think a new agency could set up a transmitter, an educational transmitter. I do not think dropping it out would stop that. But what would happen is that educational television in whatever form it comes, would not be par-



of the broadcasting system of Canada, it would be the only kind of broadcasting that would be excluded.

**Senator Flynn:** You do not suggest that because you put the words in there it would give the system or the corporation any power not a subject power which is without the competence of Parliament?

**Hon. Miss LaMarsh:** No. I do not, for a moment.

**Senator Desruisseaux:** I would like to ask the minister about the few minor points and then I would like to express a concern. In clause 2(b) in this bill, it says:

(b) the Canadian broadcasting system should be effectively owned and controlled by Canadians...

Would this word "effectively" inserted at this place mean that it could be partly owned by others?

**Hon. Miss LaMarsh:** Yes, sir.

**Senator Desruisseaux:** Thank you. The next question I have is in relation to clause 2(c), which says:

(c) all persons licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast but the right to freedom of expression and the right of persons to receive programs.....is unquestioned;

In regard to the word "but", would that not be considered as a kind of restriction? Could not the word "and" replace it quite well, if there are other things to be mentioned? Would that be a restriction?

**Hon. Miss LaMarsh:** It seems to me that it would be less clear with the word "and". The sense that it is to carry—and this clause has been much amended—is that while there is a responsibility for everything that is put out by the originator or those who send it along further, still Parliament wishes to reaffirm the right of freedom of expression and, further, the freedom to receive, with certain limitations, any programs that are put out. This means, of course, that one is not entitled to jam programs from the United States, or do things of that kind. One is entitled to receive them. It seems to me that the meaning is more clear by having it disjunctive rather than conjunctive.

**Senator Desruisseaux:** I would like to say something about the CATV in Canada. As we see it presently, it is a spreading situation and to be welcomed because it is a normal development of the science of communications. As we look into the future, it is also to be expected that CATV will be able to pick up more and more distant stations and bring them in.

There is a question I would like to put, because I feel a bit worried for our Canadian advertisers. I also feel a bit worried for the station operators who have to rely on advertising for the maintenance of their services. In advertising, we have this situation where American stations are already calling on Canadian industries to advertise. Of course, we have our ways of regulating advertising here. We have also our restrictions as to the amount of advertising that we can carry. This double situation that we have means that we bring in the American stations to the CATV to compete with our own. It may bring, let us say, more and more deficiencies, or more and more trouble in obtaining Canadian advertising from here. For that reason all international companies advertising over the U.S.A. now of course spread into Canada directly or through CATV or through the medium of CTV if they are picked up by our Canadians. Because of that some of the budgets are being, we are told, cut in advertising.

On the other hand the American stations have been advertising in Canada, and I have here the Buffalo situation where they offer representatives of Canadian agencies to gather advertising for the American stations. There is also a situation out west which has been called to my attention depicting the same thing in Vancouver and other places. There is one station there that has been established near the border. I forget the name of it, although I could find it if I looked through these notes I have. They have put the American station close to the border for the sole purpose of reaching Canadians with their advertising.

My concern about this is that we are regulating more and more our advertising policy over the networks that we have, both private and Government owned systems, but this does not give Canadians a fair chance of competing with the American situation to obtain advertising. They obtain more than they can advertise over the U.S.A. differently than we do and more often than we do and of course we are a bit concerned about future regulations on this.

**Hon. Miss LaMarsh:** Well, senator, I know that the private operators are very apprehensive about CATV inroads. We have done what we can to bring them all under the regulatory authority, but there is no attempt to sort of favour one over the other as private enterprise establishments, except in so far as the fact that originating stations are employing Canadian people and carrying Canadian programs and are part of the whole system which we hope will be a factor for unity. I think, therefore, if they are entitled by Parliament of Canada to be favoured over the system that just carries programs, then that is all.

Furthermore, much is happening in broadcasting which is not particularly reflected in this bill. Some of the latter sections deal with technical improvements, but it may be that broadcasting as it is currently known will be practically non-existent within ten years. The technological change is so very rapid that all we can do is take care of immediately anticipated needs. There will not be very much that the C.R.T.C. can do with regulations with respect to international dealings, but I have no doubt that we will have to figure out some way of doing some regulating if for no other reason than to keep the C.R.T.C. busy.

**Senator Desruisseaux:** I just wanted to express the concern so it could be registered. I know it is not provided for in this bill. There is no regulation whatsoever that shows that we can make our stations compete properly with the American stations in our own country in as much as advertising is concerned.

The only hope that I can express is that in dealing with this matter of advertising they will take into consideration the fact that the American stations are coming in with a lot more advertisement under their regulations than are Canadian advertisers.

**Hon. Miss LaMarsh:** We do not have any extra legal authority in this regard so that we can not do very much in that way. Certainly, it is within the authority of the Parliament of Canada, I think, if they wished to do so, to jam everything coming in from the United States. I do not think any government would do that, or that it would last very long if it did, because the public wishes to have the richness of all of the services it can. Certainly, through perhaps financial provision or otherwise, certain penalties could be placed on advertising on that sort of American

media, but it would not fall under the Broadcasting Act.

**Senator Flynn:** As has been done with magazines.

**Hon. Miss LaMarsh:** Yes, I am aware of that.

**Senator Desruisseaux:** I do not suggest that, Madam Minister, but my point is only that the Canadians should not be handicapped. For instance, let us take a concrete case: the advertising of beer. In the United States the breweries have a tendency to advertise over the American network into Canada.

**Hon. Miss LaMarsh:** They can show a glass. So I guess their advertising is more attractive. They can show a glass instead of just everybody being happy.

**The Chairman:** Are there any other questions? Does anyone wish to ask a question with respect to the memorandum submitted by the Association of Broadcasters? If not, I think perhaps the chairman should call it to the attention of the minister in the absence of any other senator raising the question.

**Senator McElman:** Briefly, Mr. Chairman, there is a situation in New Brunswick that I raised during the consideration of this matter in the house. If I could go to the 1966 White Paper for a moment, there is a statement of policy there that within Canada ownership or control of one medium of communication by another is equally a matter of concern, if it tends to develop into a monopoly.

The White Paper says that there is a growing number of cases where either ownership or control extends to both the local newspapers and the local radio or television facilities; that the B.B.G. will be required to investigate and report on public complaints or representations about situations of this kind. It goes on to say that the Parliament will be asked to authorize the Government to give guidance to the B.B.G. aimed at preventing foreign control of broadcasting facilities, domination of the local situation through multiple ownership, or the extension of ownership geographically in a manner that is not in the public interest.

The situation that I referred to in New Brunswick is that we have two English language television stations with their satellites covering the whole of the province. One of these is owned, reportedly, totally, certainly



with effective financial control, by a corporate structure which at the same time also effectively controls about one-third or perhaps more of the economy of New Brunswick industrially, businesswise and commercially. This same corporate structure is in the newspaper field. Of the five English language dailies in the province, it reportedly has effective financial control of four. In our major industrial city of Saint John, our largest, we have three radio stations. One is a C.B.C. outlet. Of the two private stations, this same corporate structure owns one. Again I use the word "reportedly". This same corporate entity has endeavoured to purchase the only other English language television station. Referring back to the White Paper and what was explained therein and to the further report of the committee of the Commons that reported on the White Paper March 21 last year, their comments were along the same lines as the White Paper. Therefore is it felt that the act as presently drafted provides the teeth whereby this statement of policy can be effectively carried out?

**Hon. Miss LaMarsh:** I feel so. I am aware of the particular instance to which you refer. I know what you are talking about, but I don't know whether it needs to be interpreted because it was demonstrated a few months ago how completely ineffectual it was.

**Senator McElman:** I suggest there are shades of opinion on that. It was quite well developed, I assure you, but not entirely successful. It is a matter of real concern and I would ask further whether there would have to be a public outcry for action to be taken upon this or if the directives policy-wise are sufficient that the regulatory body would itself act without public outcry.

**Hon. Miss LaMarsh:** At the top of page 12, clause 22, (1) (a) (iii), provides that orders in council may be made with respect to the classes of applicants to whom licences may not be issued. At the moment we are drafting orders in council with respect to this kind of thing. They are not going to be secret or anything like that and like others they will have to be published and then as a matter of instruction handed to the C.R.T.C.

**Senator McElman:** I also wanted to make a further comment with regard to the CAB. Perhaps it would be useful for my purposes here to explain that there have been instances in political broadcasting where the C.B.C. allots these periods after consultation with

privately-owned stations so that they may be melded into a block with public stations to disseminate political talks. After they have had their talks there have been occasions when the time allotted for political free time broadcasting was almost useless because the audience rating was right down to nil.

As an example, for several years over the protests of all political parties in New Brunswick they continued to allot a Friday evening period. Friday evening is shopping night in urban New Brunswick, and as I say the audience is just about nil at that time. I have often wondered if the C.B.C. could not induce private-owned stations to come into a block to give a decent time for these political broadcasts. I suggest that the requirement of the act is quite contrary to the submission of the CAB and the current requirement of the act is quite necessary in such instances.

**The Chairman:** Any more questions of the minister?

**Senator Croll:** I have a question on administration. Aside from the corporate structure, do you in fact know who owns the stations or who is interested in the stations?

**Hon. Miss LaMarsh:** I don't, but the B.B.G. does, I think. The chairman and members of the B.B.G. could tell you. They have returns which have to be made, and as far as I know these returns indicate who are the actual owners. It has very often been suggested that returns are not correct, and apparently there are many situations where there are hidden agreements, but I don't know about this. Perhaps members of the B.B.G. who have more experience of this than I have could answer you.

**The Chairman:** Any other questions to the minister?

**Senator Quart:** If I may have a word. I usually come here with complaints but Madam Minister is so much on the ball this morning I don't have any. I should say that I have had so many letters from so many women's groups and I would like if Madam Minister could come along some time and see the 9,000 signatures that I have to one of them. Perhaps she will come when she has lots of time—say, after the election. I would also say to Dr. Davidson that for a long time we have been watching and waiting and we have been relentless in our watchfulness. However, in looking forward to some little bit of decency in some aspects of this we are

going to continue to watch and wait. Therefore I say to Dr. Davidson that we will be right in there watching his administration.

**The Chairman:** Any other questions of the minister? Madam Minister, on behalf of the senators I wish to thank you for coming here this morning and for giving us such a lucid and clear statement.

**Hon. Miss LaMarsh:** It is always a pleasure to come to the Senate. It is so much more tranquil here than in other places in the building.

**The Chairman:** Now we have some members of the B.B.G. with us. If it is your wish we will have Dr. Stewart first. Dr. Stewart tells me he does not have a prepared statement and he is ready to answer questions. He has with him Mr. Juneau and Mr. Sim.

Perhaps, Senator Croll, you might wish to open by directing your previous question to Dr. Stewart.

**Senator Croll:** Well, all the time I have been answering questions for David Sim and now it will be a pleasure to have him answering a question for me. How thoroughly do you investigate the ownership of the stations?

**Mr. D. Sim, Member, Board of Broadcast Governors:** The complete information is to be found in the Department of Transport at the moment. At the time of application full information has to be given with regard to the ownership of the company concerned and I would think in due course when this legislation becomes effective this will become the direct responsibility of the new commission. I think it is most important to know who does in fact control enterprises of this kind.

**Senator Croll:** You say that information is available. But if a holding company goes into this field, can you find out who are the owners of the holding company?

**Mr. Sim:** Yes. Of course the senator with his long association with the law is aware of some of the difficulties with regard to holding companies and subsidiary companies and where the ultimate ownership lies, but in the main the information is there for anybody who wishes to know about it and who wishes to find out who owns these licences.

**Senator Croll:** Dr. Stewart, would you like to add anything to it?

**Dr. Andrew Stewart, Chairman of The Board of Broadcast Governors:** I think that is complete.

**Senator Haig:** Do not you have to have the full consent of the board on the transfer of shares?

**Dr. Stewart:** Yes, at the present time the Department of Transport receives applications for transfers of shares. These must be passed to the B.B.G., and a recommendation made by the B.B.G. to the Minister of Transport on all share transfers.

**Senator McCutcheon:** Through a holding company ownership can be transferred without coming to the board or the Department of Transport. I am thinking of a company like Standard Radio whose shares are listed on the Toronto Stock Exchange.

**Dr. Stewart:** Yes, a public company.

**Senator Croll:** Have you heard these rumours that I have heard for years that there are agreements existing with these various broadcasting groups which do not come to your attention at all, and you have no way of reaching them?

**Dr. Stewart:** We hear of these rumours occasionally. Some of them can be investigated. I could not guarantee that nothing has happened which should not have happened. The law is perfectly clear that with regard to the ownership of shares information on this must be provided to the Department of Transport. If transactions occur without reporting this is illegal. It could happen though.

**Mr. Sim:** Perhaps you could add that whenever control of the company is involved there must be a public hearing.

**Senator Croll:** Well, control is a different thing. It may be illegal, but nothing happens.

**The Chairman:** You mean, what are the penalties for the illegality?

**Senator Croll:** Exactly what I say, nothing happens—or has it happened?

**Dr. Stewart:** I am thinking of one case which the senator from New Brunswick would have some knowledge of. The information that we had on this has led us to say this is so it is an illegal transaction, it has not had approval.

**Senator Croll:** But then we get back to the question. What the senator brought up is not



new, it has been known in that province for many, many years, and it must have come to your attention long before this. Have you never taken steps to find out for yourself whether it is or it is not true?

**Dr. Stewart:** We have not. As a matter of fact, at the present time this is the responsibility of the Department of Transport; it is not our responsibility. I think this is one of the improvements in this bill, that responsibility will be squarely on the regulatory authority now for these matters, and it will then be possible and proper for us to pursue them.

**Senator McElman:** Now that it has been drawn to attention, could one assume it will be investigated?

**Dr. Stewart:** When the new agency is established, I have no doubt that they will accept their responsibilities in this matter.

**Senator McElman:** Would you consider, if I sent you a copy of my remarks in the debate under cover of an appropriate letter, that this would constitute a complaint that would require investigation?

**Dr. Stewart:** We would pass it to the Department of Transport at the moment.

**The Chairman:** Are there any other questions to Dr. Stewart?

**Senator Rattenbury:** Licences under this are automatically renewed are they not, the existing licences?

**Dr. Stewart:** No, they are not automatically renewed. Again, the licensee has to apply for renewal to the Department of Transport. The Department of Transport must refer it to the board.

**Senator Rattenbury:** I mean, under this new act, if, as and when it becomes law.

**Senator Flynn:** I think the question is whether the coming into force of this act will require the issuance of new licences or whether the present licences will be continued.

**Dr. Stewart:** They are automatically continued, yes.

**Senator McDonald:** How often do licences have to be renewed?

**Dr. Stewart:** At the moment the initial period is five years. The renewal period is at the discretion of the minister, and the board

has frequently recommended shorter periods than five years but the initial period is five years. This is the current situation.

**Senator McDonald:** And that will be continued under this act?

**Dr. Stewart:** Well, I would think that could be a matter for reconsideration by the new commission, yes.

**Senator Davey:** I want to ask two questions, Dr. Stewart. First, what is the approximate extent of multi-station ownership in Canada presently, in both private radio and private television? And, second, what has been the board's attitude to this multiple ownership?

**Dr. Stewart:** It is very difficult to give a simple answer to that.

**Senator Davey:** I appreciate that.

**Dr. Stewart:** Perhaps I should say that the Minister of Transport—and I am sure this is correct—prepared for public release a statement covering all share ownership in all stations in the country. This is a public document which can be acquired by anyone on request to the department on, I think, the payment of a small amount for it, but it is available to the public. One can easily then see what the extent is. I do not know quite how to describe it in terms of magnitude, so perhaps I could go on to the second part of your question, as to what the B.B.G.'s position has been on this.

I think there is a dilemma in this matter. Everybody is conscious of the dangers of concentration of expression of opinion. This is what we want to avoid. We want plurality of expression, and multiple ownership can go against this. On the other hand, there are considerable advantages to groupings of stations, economies that can be effected by larger scale of operation and through multiple ownership. It is certainly our view that in some of the cases of multiple ownership an improved level of service does in fact follow as a result of the economies. In this country we have a limited market. We have limited capacities in comparison, say, with the United States and, therefore, there is a case for us taking advantage of the economies which can help to maintain and improve the service. So, one is faced with this dilemma: there are gains, and there are dangers in the process. But we have certainly not felt that the situa-

tion has moved in any case to the extent that we should have stopped it.

I do agree that in certain instances, in cases where we know multiple ownership is involved and there is an application for an additional outlet, that the board looks at this very carefully. We are conscious of the problems of multiple ownership, but we have never rejected an application on the basis that it has gone too far. We keep saying it can go too far and it should then be stopped, but we have not tried to devise a formula for this purpose.

**Senator Davey:** You judge each case on its merits?

**Dr. Stewart:** Yes, we judge each case on its merits.

**Senator Croll:** May I ask just one question for the purpose of clarification. Would you describe that document that is issued by the Department of Transport so that we can have a look at it and see when it was prepared, and so on?

**Dr. Stewart:** Mr. Chairman, I notice that Mr. Caton of the department is here, and I am sure that he can give you an accurate reference.

**Mr. W. A. Caion, Controller, Radio Regulations Division, Department of Transport:** Mr. Chairman, we issue a document which contains a list of all broadcasting licencees, together with the stock held by the various stockholders in these companies, and, where the stock is held by other companies, a description of those other companies. This is available from the Department at a price of \$25 annually per copy. I am sure we would be glad to deposit a copy with the committee.

**Senator Croll:** I think it is important that a copy be filed.

**The Chairman:** Is it agreed that we have a copy deposited with the committee?

**Senator Flynn:** Do we have to pay the \$25?

**Mr. Caion:** We have also a similar document on CATV licencees.

**Senator Croll:** Yes, we would like both.

**Senator Davey:** It is not my intention to embarrass you, Dr. Stewart, but in your statement you mention improved service through multiple ownership. Can you give us an example of such improved service. This is,

perhaps, an unfair question, but you did say "improved service through multiple ownership", and I am wondering what would be an example of that?

**Dr. Stewart:** I think I said that where there is multiple ownership the service is good. All I can say is that—well, let me give an illustration here. Selkirk Holdings is a company which has participation in quite a number of stations, and we think that they operate very good stations.

**Senator Davey:** Where are they? In Manitoba?

**Dr. Stewart:** Most of them are in the west.

**Senator Davey:** And are they radio or television stations?

**Dr. Stewart:** Both.

**Senator Davey:** I just want to ask a question—and this is a related question—about newspaper control of radio stations. Has the B.B.G. an attitude about press control of radio and television?

**Dr. Stewart:** Yes, we have. I am sure the senator is aware of one notable case in which the B.B.G. was responsible for the association of a newspaper and a television station. I refer to another situation in a smaller market where the problem is even more acute, because you may have complete control of all the media. We were successful in having the corporate structure amended so that the newspaper was separated from the radio station, to the great advantage of the radio service, I might say.

**Senator Davey:** But presumably the same argument that you advanced about multiple ownership—that of economy and efficiency—could conceivably apply in the case of newspapers?

**Dr. Stewart:** To a more limited degree, but to some extent, yes—news services.

**Senator Flynn:** May I ask Dr. Stewart if the licence which will be issued to a CATV operator will limit the number of stations, or will indicate the names of the stations, from which programs may be received?

**Dr. Stewart:** I would think so, senator, but I would like to preface any comment on the regulations or conditions affecting the wire systems by the general statement that I would think the commission will have to go into this matter very carefully; will have to

study the whole problem; will have to set up what might be said to be proper regulations; and will have to hold public meetings so that there may be public representation. I think the process of working out the conditions and regulations when the wire systems are brought under the whole system will take some consideration, and I do not feel competent at the moment to say what regulations should be in effect.

**Senator Flynn:** But the authority is there?

**Dr. Stewart:** Yes, the authority is there.

**Senator McDonald:** I should like to point out, Dr. Stewart, that there are areas where television reception is unbelievably bad. Who do the people in those areas complain to? Do they complain to your board?

**Dr. Stewart:** Sometimes they complain to us. If I get a letter complaining of bad reception in an area I send it first of all to our technical adviser so that he can look at the situation. It may be that it is a C.B.C. station that is involved, or it may be a private station that is involved. If it were a C.B.C. station our tendency would be to refer it to the C.B.C., if there seemed to be some real basis for the complaint.

In other cases we have written to private stations about complaints about service, and on occasion we have been successful in getting them to take remedial action.

**Senator McDonald:** And if they do not take action, what can you do?

**Dr. Stewart:** Not very much, really.

**Senator Croll:** You can turn on another station; that is all.

**Senator McDonald:** I am talking about areas of Canada where you have these repeater stations, and where some of the television reception is unbelievably bad. There are areas in Canada where the television is off more than it is on. It is not that it is blinking off and on; it just goes off and stays off for hours. It seems that these people have been complaining to your board, and this situation has gone on, to my knowledge, for the last two or three years and has not been improved. Just what do you do, or how can the people in these areas get results in the way of having the television service improved, or put into the hands of somebody who will improve it. This is a situation that I have had the opportunity of watching myself

and, as I say, in some cases it has been unbelievably bad.

**Dr. Stewart:** Senator McDonald, are you from British Columbia?

**Senator McDonald:** No, I am from Saskatchewan.

**Dr. Stewart:** We hear more of those complaints, I think, from British Columbia than from any other province. In British Columbia, admittedly, the conditions of operation in the mountains are very difficult, and there is a large number of repeater stations. We have had complaints from southern Saskatchewan and southwestern Saskatchewan about poor reception, but I think some action has been taken in that area to improve the service.

**Senator McDonald:** I am thinking more of northeastern Saskatchewan. I am told that one of the problems there results from the minerals in the area. Of course, I do not know whether that is true, but it is really a bad situation.

**Dr. Stewart:** It should not put them off the air. We have at our disposal the field service of the Department of Transport, and not infrequently their inspectors go out to look at the situations. We then have something concrete to take to the operator when we seek improvement.

**Senator McDonald:** These inspectors from the Department of Transport are at your disposal?

**Dr. Stewart:** They are Department of Transport field service inspectors, and they will inspect at the request of the Board. They will look into the case.

**Senator McDonald:** Perhaps that is an answer to the problem. Thank you very much.

**Senator Grosart:** Dr. Stewart, I would like to ask you a question in connection with section 19, on hearings and procedure, which is to be found at page 10 of the bill. My question is: Do you know of any good reason why the commission should be allowed to hold hearings in secret in the three specific instances mentioned in paragraphs (a), (b), and (c). The first is the amendment of a broadcasting licence, the second is the issue of a licence to carry on a temporary network operation, and the third is complaint. I point out that in general the commission is required



to hold its meetings in public. This is an exception to that general rule. I will not go into the details because I know you are well aware of them. We follow it through in clauses 16 and 17, which I think support the contention that this gives the commission power to amend in any way whatsoever the licence granted to a station. The minister in discussing this pointed out that there was a requirement for publication in the *Canada Gazette* and in the locality, but the hearing itself can be in secret. My question is: do you know any good reason why there should be this exception in this case, which points up the matter raised by Senator McElman on a complaint such as he suggested might be put forward, when this could be heard in secret? Why is this exception made? Do you know of any good reason why all hearings of this very important authority, as it is called in the act, at any time or for any reason could be in secret?

**Dr. Stewart:** With regard to the amendment to the broadcasting licence, I do not believe there is any overriding reason why a change should not be announced for the purposes of a public hearing. The first step the minister referred to is that there should be notice that the board has received an application.

**Senator Grosart:** I am speaking only of the hearing. I know of the qualification. I am asking why the hearing itself should not be in public.

**Dr. Stewart:** The only conceivable situations are those in which an amendment is so minor and yet the need for action is sufficiently urgent that one would want to take action quickly on it. I think the new legislation will help in this regard in that we may not be as long between hearings as we have had to be under the present legislation. There have been circumstances when an amendment was minor but the original equipment which the applicant indicated he intended to acquire has not been available and he has had to change and get some other piece of equipment. The contours are not exactly as they were previously. The situation is in fact that this is an amendment and yet it is minor, but he is sitting there waiting to get ahead with the job. We have in fact approved amendments of this kind with the approval of the D.O.T. There are practical considerations of that kind.

What we want to try to avoid is bringing people from British Columbia down to Ottawa

to go through the performance of a public hearing on something nobody is lodging any complaint on and about which nobody is at all concerned. If that is what you mean by a public hearing, I think there are many cases in which we should avoid that. This is not the same thing as saying that we should put on a notice for a public hearing that we have had an application and those who want to lodge a complaint can do so. If there is no complaint and the matter is minor, if it is obvious that you are going to proceed with approval of the application, it does not make sense to me to bring the operator of a small station from the Maritimes, Newfoundland or British Columbia to a hearing in Ottawa for the purpose of going through the motions. These are some of the practical considerations.

**Senator Grosart:** Would it not be possible to give permission, to tell them to go ahead and then hold the public hearing just so that the public commission would not have this power?

**Dr. Stewart:** Senator Grosart, this is just not practical. You tell somebody to spend \$35,000 on a piece of equipment and then hold a public hearing. Are you then going to tell him to take it out?

**Senator Grosart:** There is an outstanding example of that. At the moment we are all paying some taxes that Parliament has just said we do not have to pay, so this is not an unusual situation.

**Senator Croll:** Oh, you will pay it sooner or later.

**Senator Grosart:** It is a clear case of the same thing. These things are done by grace at the present time. We are paying taxes by grace, but Parliament now says we do not have to pay them, and a very good thing. However, that is neither here nor there.

**Dr. Stewart:** I am sorry, but I think it would be very bad practice to tell people to go ahead and do things and then hold a public hearing to decide whether they are to get authority to do them. It would be very bad.

**Senator Grosart:** Perhaps we should tell the Minister of Finance, because that is precisely what he did. Are you saying, Dr. Stewart, that this would happen only in the case of a minor amendment, that that is the only time the commission in your view would be likely to avail themselves of this?



**Dr. Stewart:** I would think so, and if I were responsible for it that is the only sort of situation in which this could possibly occur.

**Senator Grosart:** But would you agree that if in the case of a major amendment the commission thought it was not in the public interest for some reason to hold a hearing they could use this authority to make any amendment they wished?

**Dr. Stewart:** That is right. Mr. Chairman, now that this matter has been raised may I be allowed to make an observation on it?

**The Chairman:** Yes.

**Dr. Stewart:** I have the report of the debate in the Senate for Thursday, February 15, and at page 861 there is a reference to a particular case in the speech by Senator Grosart. Now, honourable senators, I want to say that there is a canard here that I want to lay to rest. People are saying that in a particular case, the case of Channel 3, to which the minister referred, the B.B.G. tried to prevent this going to public hearing. This is not true. I defy and challenge anybody who is saying that to provide the proof. It is not so.

**Senator Grosart:** Dr. Stewart, you are referring to a speech I made.

**Dr. Stewart:** That is right.

**Senator Grosart:** I would like to make it very clear that what you call the canard was not in my statement in any shape or form. Perhaps you would read it. I made no such statement, nor did I imply anything such as you have been suggesting. I should like you to read it and I suggest that you withdraw that remark if the word "canard" was applied to my remarks.

**Dr. Stewart:** May I read the paragraph?

**The Chairman:** Yes.

**Dr. Stewart:** The paragraph reads:

I do not want to refer to any particular case because it is past history, but some honourable senators will know the background of my remarks. Surely this means that in private, without a hearing, and in consultation with only some of the part-time members, this executive committee can allow a station to extend its coverage far beyond that allowed in the original licence.

Mr. Chairman, I submit that with the conjunction of these two sentences in the same

paragraph the meaning of it is perfectly obvious.

**Senator Croll:** Oh no, Mr. Chairman.

**Senator Grosart:** I must speak to this, because it clearly refers to this act if you read it. I say, "Surely this" and I am referring to the provisions of the act. What I am saying there is that, as I think you have just agreed, an amendment could be made, any kind of amendment, to a licence under this act. If you wish to say it is parallel to a certain case, that is all right. I did not name a case and I merely said—and I would ask you to deny if it is so—that under the wording here any amendment can be made to any licence without debate, without a hearing.

**Dr. Stewart:** That is correct.

**Senator Grosart:** That is correct. Now, is that a canard, to say that?

**Dr. Stewart:** No sir.

**Senator Grosart:** That is what I say, and I would like you to consider, Dr. Stewart, whether you should not withdraw that remark, if you refer to my speech, because I made no such statement such as that. If you are referring to "canard" uttered by some other people, that is your privilege, but I ask you to reconsider the statement you made, because I say to you that it is not a true statement, not a proper interpretation of my remarks, and that the remark you made should not have been made in this committee about a speech made by a senator.

**Dr. Stewart:** If the senator says that my interpretation is incorrect, I withdraw.

**The Chairman:** I think that ends the matter.

**Senator Davey:** I would like to ask you about another matter, Dr. Stewart. Does the Board subscribe presently to any rating television and radio service, and, if so, which one? Also, is the Board involved in any process of considering the ratings made in this way and the tremendous influence that such ratings have on both programs and advertising?

**Dr. Stewart:** The Board is a subscriber to the rating service of the Bureau of Broadcast Networks; and we would continue, I think, to receive that and may in fact extend the use of the service. We certainly make use of the survey information that is available to us.

**Senator Davey:** As you know, there are several competing rating services which from time to time have some rather remarkable discrepancies in the size of the audience critique and in regard to various stations. Do you not think that perhaps, if not supervision, at least some investigation of the rating services might be well within the interest of broadcasting in Canada and of your Board?

**Dr. Stewart:** It may be that certain circumstances would develop which would suggest some inquiry by the Board. We have not felt any need of that. I know that in the United States at one time there was a pretty thorough investigation. We are aware that the Bureau of Broadcast Measurement, which is a tripartite organization involving broadcasting, agencies and advertisers, have employed people like Professor Dale of Carleton, to review their processes. We believe that, within the limitations of the funds available to them and the techniques that they can follow, they are satisfactory, in our view. The danger is the misinterpretation of information that is brought from the source.

**Senator Davey:** Mr. Chairman, may I make one observation on that? I feel that the advertising industry and the television industry are becoming slaves to ratings. Rating surveys are something that it would be appropriate to consider very seriously indeed.

**Senator McElman:** In the event that the Board should decide that the current licence, because of ownership, should not be renewed, would there be a decent or reasonable period of time permitted for the current owners to divest themselves of effective control, financial control? What are the mechanics, what is the procedure? Are there cases in point? Are there precedents?

**Dr. Stewart:** The only precedent I can think of is that of a radio station in Vancouver. In that case, adequate time was provided for the disposal of the assets.

**Senator Croll:** Did she get rid of it?

**Dr. Stewart:** Yes.

**Senator Croll:** A forced sale?

**Dr. Stewart:** I would not say so.

**Senator Croll:** Did she get value?

**Dr. Stewart:** There were competitive offers for it.

**Senator McElman:** There is another question I would like to ask. Is there a precedent for the C.B.C. buying privately owned facilities to become a C.B.C. outlet? I would like to continue on that. Presently, as you know there is no C.B.C. television English language outlet in New Brunswick. There are two only, both privately owned. One is presently applying for CTV affiliation. Presently they are both C.B.C. affiliation. Is there a precedent for the C.B.C. in similar circumstances purchasing a privately owned outlet rather than opening additional facilities itself?

**Dr. Stewart:** I am myself not aware of any precedent. There may be.

**Senator McElman:** I believe Dr. Davidson is.

**The Chairman:** Perhaps we can ask Dr. Davidson when he comes before us.

**Dr. Stewart:** Mr. Gilmore has reminded me that in Winnipeg there was a radio station which was purchased by the C.B.C.

**Senator McElman:** Radio?

**Dr. Stewart:** Yes. There is, however, nothing to prevent the C.B.C. doing so.

**The Chairman:** Are there any other questions to Dr. Stewart?

**Senator Davey:** This is my final question. Does the 55 per cent Canadian content rule still have validity? Is it still a regulation? The second part of that question is, could you give us some idea as to how the private television stations across Canada are meeting that requirement? Are they all meeting it presently?

**Dr. Stewart:** The regulation applies over a period of three months and our log examining section keeps a continuous check. At the end of a three-month period we get a report on the computed percentages, by our log examining section. We have never had to take action against a station for failure to meet this. I would not say that there have not been occasions when one was a decimal point or two below the 55 per cent but the evidence is that the stations are making a serious attempt to meet this regulation.

**Senator Davey:** Thank you.

**The Chairman:** Are there any other questions of Dr. Stewart? Thank you, Dr. Stewart. Mr. Sim and Mr. Juneau.

We now have Dr. George F. Davidson, President of the Canadian Broadcasting Corporation, before us. Dr. Davidson, we are very glad to welcome you here in your new capacity. You are an old friend but always welcome in any capacity. With Dr. Davidson is Mr. James Gilmore and Mr. Ronald Fraser, Vice-Presidents. I would ask you if you have any original statement to make?

**Senator Croll:** And we mean "original".

**The Chairman:** I mean, a statement to make originally.

**Dr. George F. Davidson, President, Canadian Broadcasting Corporation:** Mr. Chairman and honourable senators, I thank you for your welcome. I have a feeling that history is repeating itself, not only last night but this morning, because on the occasion of my taking the position of Secretary of the Treasury Board and, knowing nothing about what the job entailed, I found myself appearing before the Senate Finance Committee within two weeks of my appointment. And here I am again. I have no formal statement to make, Mr. Chairman.

There is one point relating to the bill before the committee, on which I would like to reflect the concern of the corporation. This refers to the same subject matter which was referred to in the first part of the brief of the Canadian Association of Broadcasters. It was referred to by Senator McElman this morning; and I am sorry to have to put forward on behalf of the Corporation a point of view that differs from the point he made in the course of his remarks.

I draw your attention to clause 16(1)(b)(i) which provides now that the commission, on the recommendation of the executive committee, may make regulations respecting standards of programs. There is no problem there, but the rest of the words, "and the allocation of broadcasting time for the purpose of giving effect to paragraph (d) of section 2", are of concern to the corporation as they are evidently of concern to the Canadian Association of Broadcasters as well.

There is a history to this wording. The wording as it originally appeared referred to scheduling policy in relation to any category or categories of programs. This was objected to both by ourselves and by the representatives of private networks. The reasons which were advanced against the inclusion of these words were accepted by the select committee

and, when the bill was reported to the house, the words that I have just read were omitted.

In the house the words, "and the allocation of broadcasting time for the purpose of giving effect to paragraph (d) of section 2", were restored, and in my judgment at least these words go even further in the direction that we are concerned about than the words that were originally in the first draft.

May I explain the nature of our concern? We recognize that it would be a valid position for the commission to take that it should make some general regulation having to do, for example, with the allocation of time to ensure adequate review of Canadian content in broadcasting. We recognize also that it would be a valid position for the commission to take that it should prescribe a certain proportion of broadcast time to be allocated to different program subject matter such as news, entertainment, music or drama. We would go further and say that it is understandable and proper that the commission should prescribe that within what is known as prime time a certain percentage should be allocated to news or to some other subject matter. But what we are concerned about is that it is possible, in the interpretation of the words now, to go beyond this, to get into the details of allocating time for specific programs, to specific times, which can conceivably affect the ability of the corporation or of any broadcasting enterprise to schedule its own programs in a way that is going to make it possible for it to maintain a viable financial operation.

The effect of the corporation being deprived to any significant extent of its right to schedule its own programs, having in mind the problems that arise on the revenue and income side if program schedules are not adhered to, is a matter that is of concern to us.

I know it will be said, and I accept the suggestion, that after all this is not the intent of the wording. But the concern that we have is that the wording as it now stands makes these interpretations possible. I know that it will be said that the commission will undoubtedly consist of reasonable men and women, and that they could be relied upon not to promulgate any regulation which through involvement in detailed schedulings of program time would usurp the functions of the management of the corporation or the management of the broadcasting enterprise in the private sector. But the fact still remains



that the wording as it now stands leaves open the possibility of interpretations which we believe would be against the best interests of adequate control by the management of the corporation in its programming activities.

I felt, honourable senators, that I had to place the concerns of the corporation on the record because of the need from our point of view to maintain a degree of flexibility and management initiative and control over our own programming obligations and requirements.

**The Chairman:** Dr. Davidson, this clause to which you refer is tied in with paragraph (d) of section 2. You do not feel that that gives you enough protection with respect to the allocation of time, having in mind that section 2(d) is part of the objective of the broadcasting policy of Canada?

**Dr. Davidson:** Section 2(d), Senator Leonard, is of course referred to here, and the purpose of this authority is limited to the allocation of broadcasting time for the purpose of giving effect to paragraph (d) of section 2. I would point out, however, that this is a declaratory paragraph. It is subject to interpretation as to what it means. It seems to me that there could be a wide variety of interpretations as to what section 2(d) means, and it will be the view of the commission which will prevail as to whether the regulation that it is promulgating for the purpose of allocating time is for the purpose of giving effect to what it interprets to be the meaning and purpose of subsection (d) of section 2.

**Senator Flynn:** Do you suggest an amendment?

**Dr. Davidson:** I am aware of the position that the minister referred to. Obviously, in the time frame in which Parliament is now working, I suppose it would be extremely difficult to contemplate an amendment. I have to say, however, that the corporation would prefer not to have these words in here and that, secondly, if words are to be in here, the corporation for its part would prefer to have the words that were originally in rather than the words now in here. I have not read the debates in the house where very brief reference was made to this clause. I have not been able to comprehend clearly what it is that has prompted the reinsertion of this provision in the bill before the committee.

**Senator Flynn:** You would suggest that the words be deleted as is suggested in the

memorandum of the Canadian Association of Broadcasters?

**Dr. Davidson:** That would be our preferred position. I have to say that.

**Senator Flynn:** If there is no technical difficulty with regard to the operation of Parliament, you suggest that the Senate or this committee would do well to amend the bill.

**Dr. Davidson:** That is the position, sir, that I have to take.

**The Chairman:** Dr. Davidson, have you anything further to say in a preliminary statement?

**Dr. Davidson:** No, sir.

**The Chairman:** Dr. Davidson is now ready to answer any questions with respect to the bill as a whole.

**Senator Flynn:** Would you say, Dr. Davidson, that you will be in better position with this act than under the present legislation to discharge your responsibilities as President of the C.B.C.?

**Dr. Davidson:** I would have to say yes to that question, Senator Flynn, for two reasons. I believe that the responsibilities of the corporation are more clearly set out here in this legislation than they have been hitherto, and I am referring to the responsibilities inherent in providing a national broadcasting service, which is given more body and substance as to what Parliament intends it to be in this bill than it has in any previous legislation. I think also, secondly, that the legislation is helpful in that it sets out more clearly than ever before the responsibility of the corporation to the proposed new Canadian Radio-Television Commission. I think that is all to the good, because it clarifies the responsibilities of the corporation and it clarifies the position of the commission vis-à-vis the corporation. I think that is all to the good.

**Senator Flynn:** I suggest there is nothing in this legislation that would give you a stronger hand to control or prevent the building up of small empires within the corporation.

**Dr. Davidson:** I would have to say there that the problem you refer to is one of effective control by the management of the affairs of the corporation. I do not think the legislation passed by Parliament is going to affect the ability of competent management to manage the affairs of the corporation.



**Senator Flynn:** I am speaking specially of the field of programming.

**Dr. Davidson:** There are here statutory injunctions laid upon the national broadcasting service by Parliament which are providing an effective means by which management can ensure that programming is carried out in conformity with standards which Parliament has prescribed. That would be the responsibility of the management of the corporation.

**The Chairman:** Senator Grosart.

**Senator Grosart:** May I refer back to 16, which is a matter which you were discussing earlier and in which you find yourself in agreement with the CAB association? I wonder if this submission doesn't go a little too far when it says "thus the commission could tell a station to carry at six o'clock every Saturday night some program on matters of public concern." I am suggesting you both may be too alarmed about the interpretation of 16(b)(1). I say that for this reason. It depends on how you define "allocation". If I may explain, in the discussions before the C.B.C. as to the allocation of political time between the parties, as far as I can recall allocation meant only the allocation of blocks and not the specific timing of the program. I suggest to you that "allocation" does not necessarily mean or have to mean what the CAB presentation says. They may be unduly alarmed about this.

**Dr. Davidson:** You may be completely right, and I think I have already said this. However, I think we have to assume that the commission will be made up of reasonable people. We have to assume that the interpretation that will be made will be a reasonable one. I think the interpretations placed on the words are reasonable, logical, probable interpretations but I remain concerned that the wording is sufficiently broad in general, in fact vague, that other interpretations are possible. Are you suggesting for example that the words "allocation of time" will cover specific allocations of specific periods of time?

**Senator Grosart:** I am suggesting that that has not been the interpretation placed on the word "allocation". To my knowledge, and this is very limited, in this particular area in which I have had some experience, "allocation" was certainly always taken not to mean the setting of specific times but rather to say "This party shall have so much time, and the other party shall have so much time," and so

on. This is exactly the position that you take as being within the probable competence of the commission.

**Dr. Davidson:** I hope very much that your interpretation of these words becomes firmly and consistently the interpretation of any body set up to interpret the words.

**Senator Grosart:** I thought I would put them on record in case this might be helpful.

**The Chairman:** I would like to inform honourable senators that there has been laid on the table the Department of Transport ownership lists of private commercial broadcasting stations as arranged for earlier.

**Senator Flynn:** We should express our thanks to the department.

**The Chairman:** They are here for perusal if any member of the committee would like to examine them.

**Senator McElman:** Dr. Davidson has stated that we are in a hypothetical danger, but of course the instance I was referring to was not hypothetical at all. We were informed that the C.B.C. was unable to do anything about it. I understand that at that stage what they could do was to negotiate with the affiliates and privately owned stations for a straight-away time which in effect would cover the whole province, but they were not able to negotiate a time that was of any value. Now this situation—and I was involved in it myself—prevailed over a period of several years and it led many people to think that, since it involved both the Nation's Business in matters referring to federal political broadcasting and to provincial affairs in matters affecting the provincial field of politics, they could not negotiate to any prime time over a period of several years. My only suggestion was that perhaps there is a need for teeth that would back up the negotiations. That is to say there should be negotiations first, but if negotiations cannot be successful in getting the Nation's Business before the nation then there should be teeth there to move the negotiations along.

**Dr. Davidson:** To complete the record you may know that we have been successful in negotiating with the affiliated stations with regard to the Nations Business which now does appear at a somewhat more acceptable time.

**Senator McElman:** Yes, but nevertheless over a period of years we have had no effective broadcasting in this field.

**The Chairman:** Senator Davey.

**Senator Davey:** I would like to ask Dr. Davidson if he has yet had an opportunity to form an attitude in relation to the advertising sales development of C.B.C. radio and television, not as to its efficiency, because I think it is efficient, but as to its very existence. From time to time I have been alarmed by the attitude of some C.B.C. people that they should not be involved in the business of obtaining revenue through advertising. Personally I think they should. I wonder, Dr. Davidson, if you have had the opportunity to form any views on this.

**Dr. Davidson:** I have not been there long enough to form a view on this. I am aware of the views expressed by the Fowler Committee, and I am also aware of the different attitudes in different sectors of the corporation itself. I think I need a little more time to formulate a valid opinion on this.

**The Chairman:** Senator McCutcheon.

**Senator McCutcheon:** I would like to ask if Dr. Davidson has had time to come to a conclusion as to whether the implementation of the recommendations of the Glassco Commission regarding C.B.C. is practical or desirable.

**Dr. Davidson:** Senator, I could reply to you in technical terms and say that I have read the report of the Glassco Commission and I do not recognize in that a single recommendation of any kind. It is the one report, strangely enough, in all the reports of the Glassco Commission where no formal recommendations have been made. I would like you to examine carefully the text of the report to confirm that statement. However, having said that, one cannot read the report of the Glassco Commission without seeing suggestions and findings of various kinds scattered throughout the text. There are also opinions of various kinds. It constitutes one of the rather numerous reports of a wide variety of management consultants that I have on my desk for study at the present time. There is the finding of the Glassco Commission, the findings of the Presidents Study Group which is the most recent one, the report by P. S. Ross, and the findings of the Fowler Committee.

I am not lacking in advice as to the kinds of things that should be done, not only to

improve the C.B.C. but also the kinds of things that should be done to the C.B.C. I am trying to sort out this wealthy treasure house of advice and to select those recommendations for improvement of the effective performance of the corporation which commend themselves to my judgment. And it is my judgment, the judgment of my executive vice-president-to-be, of the board members-to-be and of the corporation-to-be that will have to take the responsibility for determining which of these numerous recommendations are to be implemented. I still need a little time, but I do not ask for too much time.

**Senator Grosart:** If you run out of them, I am sure you will always be welcome back to the Senate committee, Dr. Davidson.

**Senator Croll:** Let us get on and report the bill.

**Senator McElman:** Does the C.B.C. propose either to acquire or establish a television outlet in New Brunswick?

**Dr. Davidson:** We have that very definitely in our plans. We have our problems in terms of financial resources to make it possible, but we have definitely in our plans acquisition, in one way or another, or the establishment of a C.B.C. television outlet in New Brunswick.

**Senator McDonald:** Does that statement also apply to Saskatchewan?

**Dr. Davidson:** Yes.

**Senator McDonald:** Has a decision finally been made whether that facility would be—

**Dr. Davidson:** No, sir.

**Senator McDonald:** —in Regina or Saskatoon?

**Dr. Davidson:** No, sir.

**The Chairman:** He beat you to it!

Before we deal with the bill itself, I know you would like me to thank Dr. Davidson and to wish him well in his new and heavy responsibilities.

**Hon. Senators:** Hear, hear.

**Dr. Davidson:** Thank you, honourable senators.

**The Chairman:** How do you wish to deal with the bill, clause by clause—

**Senator Croll:** I will move its adoption.

**Senator Flynn:** I suggest Senator Croll is worried. I think we are going to be here for a few days yet.

**The Chairman:** Shall the short title stand?

**Hon. Senators:** Stand.

**The Chairman:** Shall clause 2 carry?

**Senator Flynn:** I would move an amendment, to delete clause 2(i). I do not think it adds anything, and it creates some misinterpretation. I suggest the corporation wants to deal with education without the concurrence of the provinces, and I would therefore move that clause 2(i) be deleted and that clause 2(j) be relettered as (i).

**The Chairman:** Is there any discussion on the motion by Senator Flynn for deletion of clause 2(i) and the relettering of clause 2(j)? Are you ready for the question?

**Senator Flynn:** I do not think it is useful at all.

**The Chairman:** Are you ready for the question? Those in favour of Senator Flynn's motion, please hold up your right hand? Opposed, if any? I declare the motion lost.

Shall clause 2 carry?

**Senator Flynn:** I will move a second amendment, that after the words "educational broadcasting we add the words "with the concurrence of the provinces" at the end of clause 2(i).

**The Chairman:** It would then read:

(i) facilities should be provided within the Canadian broadcasting system for educational broadcasting

**Senator Flynn:** And "with the concurrence of the provinces".

**Senator Grosart:** With the "consent".

**Senator Flynn:** No, "concurrence". It would have to be with the concurrence of the provinces.

**Senator Connolly (Ottawa West):** I may suggest that this is contemplated and is going to happen in any event.

**Senator Flynn:** That is all right, but it could be made clear.

**The Chairman:** Is there any further discussion on the motion? Are you ready for the question? All those in favour of Senator

Flynn's amendment to clause (2i)? Contrary? I declare the motion lost.

Shall clause 2 carry?

**Hon. Senators:** Carried.

**Senator Flynn:** On division.

**Senator McCutcheon:** On division.

**The Chairman:** Is there anything further on clause 2? Carried on division.

Clause 3, the interpretation section. Definitions—

**Hon. Senators:** Carried.

**The Chairman:** Clause 4. Shall clause 4 carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 5, commission established?

**Hon. Senators:** Carried.

**The Chairman:** Clause 6?

**Hon. Senators:** Carried.

**The Chairman:** Clause 7; shall clause 7 carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 8?

**Hon. Senators:** Carried.

**The Chairman:** Clause 9?

**Hon. Senators:** Carried.

**The Chairman:** Clause 10, staff?

**Hon. Senators:** Carried.

**The Chairman:** Clause 11?

**Hon. Senators:** Carried.

**The Chairman:** Clause 12?

**Hon. Senators:** Carried.

**The Chairman:** Clause 13, by-laws?

**Hon. Senators:** Carried.

**The Chairman:** Clause 14, executive committee?

**Hon. Senators:** Carried.

**The Chairman:** Clause 15, objects of the commission?



**Hon. Senators:** Carried.

**The Chairman:** Clause 16?

**Senator Flynn:** I would move the amendment suggested by Dr. Davidson: in paragraph (1) (b) (i), delete the words:

... and the allocation of broadcasting time...

**The Chairman:** Any discussion on the motion?

**Senator Connolly (Ottawa West):** I have discussed this with the minister, and she is not in accordance with the view Dr. Davidson has expressed. She would prefer the clause to be left as it is.

**Senator McElman:** I agree, and the instance I have referred to, I think, is ample proof that these teeth are required. I think it has been shown clearly.

**Senator Croll:** Question!

**The Chairman:** Is there any further discussion on the amendment?

It is moved by Senator Flynn that the words:

... and the allocation of broadcasting time... be struck out of clause 16(1)(b)(i).

Are you ready for the question? All those in favour? Contrary? I declare the motion lost.

Shall clause 16 carry?

**Hon. Senators:** Carried.

**Senator McCutcheon:** On division.

**The Chairman:** Clause 16 is carried, on division.

Clause 17?

**Hon. Senators:** Carried.

**The Chairman:** Clause 18?

**Hon. Senators:** Carried.

**The Chairman:** Clause 19, hearings?

**Hon. Senators:** Carried.

**The Chairman:** Clause 20, public notice?

**Hon. Senators:** Carried.

**The Chairman:** Clause 21, procedure?

**Hon. Senators:** Carried.

**The Chairman:** Clause 22, directions of the Governor in Council?

**Hon. Senators:** Carried.

**The Chairman:** Clause 23?

**Hon. Senators:** Carried.

**The Chairman:** Clause 24, shall clause 24 carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 25, decisions and orders final?

**Hon. Senators:** Carried.

**The Chairman:** Clause 26, appeals?

**Hon. Senators:** Carried.

**The Chairman:** Clause 27, directions by the Governor in Council?

**Hon. Senators:** Carried.

**The Chairman:** Clause 28, political programs and referendums. Shall clause 28 carry?

**Senator McCutcheon:** No, I would move an amendment, Mr. Chairman, that the words in clause 28(1) should read as follows:

no broadcaster shall broadcast a program, advertisement or announcement of a partisan character...

... and so on.

**Senator Flynn:** In other words, you would delete the words: "and no licensee of a broadcasting receiving undertaking shall receive a broadcast of"? These are the words you would delete?

**Senator McCutcheon:** Yes.

**The Chairman:** This applies to CATV, a cable system?

**Senator Croll:** Yes.

**The Chairman:** Is there any discussion on Senator McCutcheon's motion?

**Senator McCutcheon:** There will be some consequential amendments.

**Senator Smith (Queens-Shelburne):** I wonder if you would read the amended clause? I did not quite get it.



**Senator Croll:** As I have it, it will read:

(1) No broadcaster shall broadcast a program, advertisement or announcement of a partisan character in relation to...

and so on.

**Senator McCutcheon:** Yes.

**The Chairman:** The effect of it will be that a licensee of a broadcasting receiving undertaking has the right to receive a political program within the prescribed limits. Is that right?

**Senator Flynn:** Yes, it is only the licensee that would commit the offence, and not the receiving undertaking.

**Senator McCutcheon:** There would be an offence committed, but there would be no penalty imposed.

**The Chairman:** It would not be under this act.

**Senator McCutcheon:** Yes.

**The Chairman:** Is there any further discussion on Senator McCutcheon's motion? Are you ready for the question? All those in favour of Senator McCutcheon's amendment will raise their right hand.

**The Clerk of the Committee:** Three.

**The Chairman:** Will those to the contrary raise their right hands?

**The Clerk of the Committee:** Ten.

**The Chairman:** I declare the amendment lost.

Shall clause 28 carry?

**Hon. Senators:** Carried.

**Senator McCutcheon:** On division.

**The Chairman:** Clause 28 is carried on division.

Shall clause 29 carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 30 carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 31, report to parliament, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 32, expenditures, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 33 carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 34, which establishes the Canadian Broadcasting Corporation, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 35, outside interests, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 36, President, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 37, remuneration, carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 38, staff, carry?

**Hon. Senators:** Carried.

**Senator McCutcheon:** I think you can assume that the balance of the bill will carry, Mr. Chairman.

**The Chairman:** Shall the balance of the bill carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall the title carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

**Senator McCutcheon:** On division.

**The Chairman:** There being no further business before the committee, the committee is adjourned.

The committee adjourned.











Second Session—Twenty-seventh Parliament

1967-68

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable T. D'ARCY LEONARD, *Chairman*

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No. 7

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*Complete Proceedings on Bill C-104,*

intituled:

"An Act respecting The Bell Telephone Company of Canada".

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WEDNESDAY, MARCH 6th, 1968

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WITNESSES:

*The Bell Telephone Company of Canada:* Marcel Vincent, President.  
A. J. de Grandpré, Vice-President. Robert C. Scrivener, Executive  
Vice-President. R. C. McLaughlin, Parliamentary Agent.

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APPENDIX "A":

Explanatory Notes supplied by The Bell Telephone Company of Canada.

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REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable T. D'Arcy Leonard, *Chairman*

The Honourable Senators

Aird,	Lang,
Aseltine,	Lefrançois,
Beaubien ( <i>Provencher</i> ),	Leonard,
Bourget,	McCutcheon,
Burchill,	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips,
Gélinas,	Power,
Gershaw,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thompson,
Hollett,	Thorvaldson,
Isnor,	Vien,
Kickham,	Welch,
Kinley,	Willis—(45).
Kinnear,	

*Ex officio members:* Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate, Tuesday, March 5th, 1968:

"A Message was brought from the House of Commons by their Clerk with a Bill C-104, intituled: "An Act respecting The Bell Telephone Company of Canada", to which they desire the concurrence of the Senate.

The Bill was read for the first time.

With leave of the Senate,

The Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Lefrançois, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, March 6th, 1968.

(7)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

*Present:* The Honourable Senators Leonard (*Chairman*), Croll, Flynn, Fournier (*Madawaska-Restigouche*), Gouin, Haig, Hays, Hollett, Lefrançois, McDonald, Méthot and Rattenbury—(12).

*Present, but not of the Committee:* The Honourable Senator Langlois.

*In attendance:*

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and, Chief Clerk of Committees.

Upon motion, *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill C-104, "An Act respecting The Bell Telephone Company of Canada", was considered.

The Honourable Senator Croll moved, and it was so *Resolved* that the explanatory notes supplied by The Bell Telephone Company of Canada be printed as Appendix "A" to these proceedings.

WITNESSES:

*The Bell Telephone Company of Canada:*

Marcel Vincent, President.

A. J. de Grandpré, Vice-President.

Robert C. Scrivener, Executive Vice-President.

R. C. McLaughlin, Parliamentary Agent.

Upon motion, it was *Resolved* to report the Bill without amendment.

At 10.20 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,  
*Clerk of the Committee.*

## REPORTS OF THE COMMITTEE

WEDNESDAY, March 6th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-104, intituled: "An Act respecting The Bell Telephone Company of Canada", has in obedience to the order of reference of March 5th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*

WEDNESDAY, March 6th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-104, intituled: "An Act respecting The Bell Telephone Company of Canada", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,  
*Chairman.*

## THE SENATE

### STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Wednesday, March 6, 1968

The Standing Committee on Transport and Communications, to which was referred Bill C-104, respecting The Bell Telephone Company of Canada, met this day at 9.30 a.m. to give consideration to the bill.

**Senator T. D'Arcy Leonard (Chairman)** in the Chair.

**The Chairman:** Honourable senators, the Senate has referred to us Bill C-104 respecting The Bell Telephone Company of Canada. This is an important company and an important bill. May I have the usual motion with respect to the reporting and printing of the proceedings of the committee in French and English?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Senator Langlois explained this bill on second reading in the Senate last evening. We have with us this morning on behalf of the company Mr. R. C. McLaughlin, Parliamentary Agent for the company, Mr. Marcel Vincent, President, Mr. A. J. de Grandpré, Vice-President (Law), and Mr. R. C. Scrivener Executive Vice-President.

Senator Langlois, would you like to say anything in addition to what you said last night?

**Senator Langlois:** Thank you, Mr. Chairman. Honourable senators I do not want to take the time of the committee to give any explanation as to the general purposes of this bill. I have nothing to add to what I said last night when I endeavoured to cover the clauses of the bill in a general way. As the

Chairman has indicated we have here with us this morning officers of the company and I would now respectfully suggest that the Parliamentary Agent of the company be asked to introduce them. I have no doubt they will be pleased to answer any questions or to give any information that the committee might wish to obtain from them.

**Mr. R. C. McLaughlin, Parliamentary Agent, The Bell Telephone Company of Canada:** Honourable senators, may I introduce Mr. Marcel Vincent, President, Mr. A. J. de Grandpré Vice-President (Law) and Mr. Robert C. Scrivener, Executive Vice-President. Mr. de Grandpré will outline the bill for you in a general way.

**The Chairman:** Honourable senators, shall we then proceed in a general way with a statement on behalf of the company?

**Senator Croll:** Mr. Chairman, there has been handed out to us explanatory notes prepared by counsel for the company and they are more elaborate than the explanatory notes in the bill itself. I would move that they be incorporated as an appendix in our record.

**The Chairman:** Is that agreeable?

**Hon. Senators:** Agreed.

*(For text of explanatory notes, see Appendix "A")*

**The Chairman:** Mr. de Grandpré, would you like to make a general statement covering this bill?

**Senator Croll:** In doing so, Mr. de Grandpré, where an amendment has been made before the other house would you indicate it to us and give us the background so that we will have as much information as possible about what went on there.

**Mr. A. J. de Grandpré, Vice-President (Law), The Bell Telephone Company of Canada:** Mr. Chairman and honourable senators,

the bill, as you know, was introduced in October 1966 and has received extensive hearings before the Transport and Communications Committee of the House of Commons. We were before them for a period of several months, and, as indicated by Senator Croll a few moments ago, different amendments were introduced. I will try to summarize briefly the highlights of the bill and to indicate at the same time where amendments were introduced by the committee.

Clause 1 of the bill is simply a clause which would permit the company to use the trade name that was granted to it in February 1966, namely, "Bell Canada" to be added to the original names The Bell Telephone Company of Canada and La Compagnie de Téléphone Bell du Canada.

There is the usual provision under this clause protecting the public against actions taken against the company under the old name, and the company will be bound by the agreements entered into by the company under its original corporate name.

The second clause deals with the capital stock of the company. As you know the capital stock has been increased from time to time and now stands at \$1 billion. An amendment is now sought in this bill to allow an increase by \$750 million which, in relative terms, is the smallest increase ever asked by the company. If one looks at the various amendments introduced from time to time, one sees that increases of 100, 150 and 200 per cent were granted from time to time by Parliament. This one represents 75 per cent of the now authorized capital.

Now, why do we need \$750 million? We need \$750 million to meet the growth of the construction program undertaken by the company, the construction program, the average of which is now in the neighbourhood of \$320 million a year. This construction program, over the next ten years, would probably force the company to incur expenditures of about \$4,350 million.

There are other requirements, of course—requirements to maintain our equity ownership in the subsidiaries of the company, and other requirements—the total of which we estimate to be about \$400 million. So that the total requirements of the company for the ten years to come approximate \$4,750 million.

What are the resources to meet this construction program and these other commit-

ments? We will have depreciation reserves approximating \$2,150 million, and other resources, such as premium on stock issues and retained earnings, will total approximately \$2,450 million; so that we are left with a net requirement of approximately \$2,300 million. That is the difference between the total requirements of \$4,750 million and the internal resources of \$2,450 million.

As you are probably aware, the company has tried to maintain over the years a debt ratio of approximately 40 per cent. At present due to equity market conditions, the ratio is slightly higher than the 40 per cent which was approved on repeated occasions by the Board of Transport Commissioners, predecessor to the Canadian Transport Commission, and assuming a debt ratio of approximately 40 per cent, the financing by way of bonds will require approximately \$1 billion, leaving an equity requirement of \$1,300 million. This requirement, of course, is at the market or issue price of the stock, while the additional requirement under the proposed clause is on a par basis.

When we introduced the bill we thought the \$750 million was sufficient to carry us over a period of approximately 10 years. We had assumed an issue price for our stock of \$43. The market behaves in such a way today that I think we were over optimistic or conservative in our approach, and whether it will last the 10 years will depend, of course, on the behaviour of the market. A ten-year period is the approximate period at which Parliament has reviewed our capital requirements. We had an increase in our capital authorization in June, 1948—I am talking about the post-war period, of course—of \$350 million, and this lasted until December, 1957. In 1957 we received another authorization to increase our capital, and this is just about to be exhausted, so that the decades appear to be the historical periods of our capital increases.

The third provision deals with preferred shares. As you know, the capital structure of the company is the simplest structure that one could expect to meet in a company of this size. We have common shares and bonds; we have no preferred shares and no other types of security. It is a very simple structure. During certain periods, when market conditions are depressed, it is made more advantageous to have access to other types of markets. I am not suggesting that if we get this additional power to issue preferred shares the preferred shares will be issued tomorrow, but this is



the kind of flexibility we would like to have in view of current market conditions.

**Senator Croll:** No amendment was made in clause 2?

**Mr. de Grandpré:** No, sir.

**Senator Flynn:** In view of the fact the bill was explained last night by Senator Langlois, and we have very extensive explanatory notes in the bill and in this memorandum, the witness could very well deal only with the amendments brought forward in the other place, and we could afterwards put some questions, if need be.

**The Chairman:** Is that the way the committee feels? I think if it is satisfactory to Mr. de Grandpré, all well and good, and we might follow that suggestion.

Apparently, the committee would like to know what the House of Commons did with the bill as you introduced it, in the way of amending it, Mr. de Grandpré.

**Mr. de Grandpré:** In the original bill—and I am coming to clause 4—there was a clause 4 which does not appear in the bill as it was passed; it was deleted. This was the clause dealing with the jurisdiction of the Canadian Transport Commission over the issue of our capital stock. We had felt at the time that the basis of regulation having been changed, by the latest decision of the Board of Transport Commissioners changing the basis of regulation from a dollar per share basis to a percentage on total invested capital, that the pressures were certainly against lowering the issuing price. Therefore, we felt the jurisdiction of the C.T.C. over the issuing of our capital stock was a redundant type of regulation; but the committee felt otherwise and this clause was deleted. Thus it is no longer in the printed bill you have before you.

**The Chairman:** That makes it clear now. You still must go before the C.T.C. for any increase in stock?

**Mr. de Grandpré:** Yes, that is correct, for both our common and preferred stock issues.

If you will permit me, I will refer again to the numbering that you have before you. I think it will be easier, having indicated clause 4 was deleted.

The next clause, clause 4, did not receive any amendments.

**The Chairman:** That is our clause 4?

**Mr. de Grandpré:** That is your clause 4. Clause 4 was not amended. Clause 5 was not amended. Clause 6 was one that received very extensive consideration both by the standing committee, and by the committee of the whole, and it was amended to reassure everyone that our repeated statements, back in 1948 and again in 1967, were not merely statements of intention, of pure intention, but that we intended to live to the letter of our statements.

We had indicated that we did not want to be broadcasters, that we did not want to be community antenna operators, that we did not want to be publishers, and that we did not want to control in any way the contents of the message or the impact of the message. We wanted to be common carriers, purely and simply, and these amendments were introduced in the committee and are reflected in subclauses (2), (3), and (4) of clause 6. That is why you have such expressions as the company will act solely as a carrier, the company will not be a C.A.T.V. operator, and the company will not be entitled to apply for and be the holder of a broadcasting licence as defined in the Broadcasting Act.

**Senator Flynn:** These are negative provisions?

**Mr. de Grandpré:** That is correct. We are limiting our powers considerably.

**The Chairman:** And the amendments were made so that your own intentions might be carried out?

**Mr. de Grandpré:** That is right. The original amendment was more or less reflected in the first subclause of clause 6. There were some very minor amendments made to satisfy the Secretary of State and the Department of Justice so that all the regulations affecting broadcasting were clearly covered by the wording. They thought that our wording did not exactly meet this objective, and they suggested additions, but these are minor additions which do not go to the substance of the clause.

Under this clause we have the power to be a telecommunications company. This is the essence of clause 6(1), but the two additional subclauses are limitations of this power to be in the telecommunications field. They are the limitations that I have just outlined.

The three additional subclauses that were added to clause 6, namely, subclauses (4), (5) and (6), were also introduced by the committee.

The company feels very strongly that it should have complete control over the system, firstly, in order to protect the equipment and to make sure that all equipment is compatible, and, secondly, in order to make sure that the fringe operations, which sometimes can become the most lucrative operations, are not taken away from it to the detriment of the basic subscriber—the fellow who cannot afford to have these sophisticated types of equipment.

**Senator Croll:** What is a fringe operation?

**Mr. de Grandpré:** I am thinking of the antique sets, the Ericafone, and things like that. The committee recognized the importance of protecting the system for the benefit of the general public. As stated in subclause 4, the company will decide what requirements are reasonable, and these requirements will be prescribed by the company. Perhaps I might read this clause. It is as follows:

For the protection of the subscribers of the Company and of the public, any equipment, apparatus, line, circuit or device not provided by the company shall only be attached to, connected or interconnected with, or used in connection with the facilities of the Company in conformity with such reasonable requirements as may be prescribed by the Company.

This is the basic principle.

Now, of course, when you give a company very wide powers as to the kinds of requirements that it is entitled to define, it can lead to abuses. In order to protect the general public against possible abuses by the company the following subclauses were introduced to create a procedure under which the Canadian Transport Commission is given the necessary jurisdiction to decide either *proprio motu* or on application whether the requirements are reasonable requirements. It also has the power to order the company to substitute its own requirements, or order the company to make additions or modifications in the requirements submitted for approval, so that the public is thoroughly protected.

There is a special right given to an aggrieved person to apply to the commission for a determination of the reasonableness of a

requirement, whether that requirement is one originally decided by the company, or a requirement introduced by the company, or one amended by the C.T.C.

**Senator Croll:** And "person" is defined as.

**Mr. de Grandpré:** "Person" is defined as any person who is affected by any requirement of the company.

**Senator Croll:** A corporation?

**Mr. de Grandpré:** Yes. A "person" is any person who is affected by any requirement prescribed by the company, and such person may apply to the Canadian Transport Commission for a determination of the reasonableness of such requirement.

Finally, there is, under the Railway Act, a right of review and a right of appeal to the Cabinet in respect of questions of law and fact, and on questions of law only, to the Supreme Court of Canada.

So, as can be seen, the powers were extensively modified by the committee.

Clause 7 deals with the power to invest in other companies, and it also has been very substantially modified. The original demand was that the company should have the power to invest in two additional types of corporations, namely, a company the powers of which are in whole or in part similar to the objects of Bell Canada, and, secondly, in companies involved in research and development work in areas dealing with telecommunications.

The first portion of the clause—the broad power to invest, which is similar to the power given under the Canada Corporations Act, in companies having objects in whole or in part similar to the objects of the company—was deleted from the original bill, and we are left now with the power to invest in R. and D. companies, but only in R. and D. companies interested in telecommunications problems.

A proviso was added in order to protect the investment in Northern Electric—to protect the status quo of the investment in Northern Electric. The committee did not want this power to invest in R. and D. companies to be used extensively as a way of circumventing the things it had prevented us doing by deleting the first portion of the clause, and in effect it said: "Provided that this R. and D. company in which you are authorized to invest will not sell manufactured products

either to you or to others," but it also said: "This restriction will not apply to subsidiaries of the Company at the time this bill becomes law." So, the new wording, if I am permitted to read it, is as follows:

For the purpose of carrying out its corporate powers the Company is empowered to purchase or otherwise acquire, and to hold shares, bonds, debentures or other securities in any other company engaged in research and development work in areas of inquiry that relate to the objects of this Company and to sell or otherwise deal with the same, provided that such other company, not being a subsidiary of the Company on the date on which this Act comes into force, does not manufacture products for sale to the Company or to other customers.

There again it was a very substantial reduction in the powers we were seeking.

**The Chairman:** Does this mean you cannot buy the shares of another telephone company?

**Mr. de Grandpré:** No, this is already covered by our original act of incorporation.

Sections 8 and 9 were not amended.

Section 10 was amended by adding at the end the last three lines appearing on page 8 of the bill before you, starting at line 30 with the words:

and section 378 of the Railway Act shall apply to the company in so far as line or lines of telecommunication are concerned.

I will tell you why this was introduced. In our original act of incorporation the words used were "telephone or telegraph lines". In the Railway Act the words used are "telephone or telegraph lines". In order to adapt the wording of section 10 we had to change the word "telephone" to "telecommunication" because of the amendment introduced and approved by the committee in section 6 dealing with the telecommunication powers. It became obvious that if we had telecommunication powers the lines we were running were telecommunication lines and no longer telephone lines. We therefore had to make these technical changes.

Having amended our act so that it now reads "telecommunication lines" it was realized that we needed to make sure that the provisions of the Railway Act applicable to telephone lines were equally applicable to

telecommunication lines in our act. That is the purpose of the last three lines, reading:

and section 378 (except subsection (1)) of the Railway Act shall apply to the company insofar as line or lines of telecommunication are concerned.

This amendment was introduced by, if I may use the word, consent when the Canadian Federation of Mayors and Reeves, and the Ontario Association of Mayors and Reeves appeared before the Committee on the same day.

Section 11 was amended at our request. This section deals with loans to employees who are shareholders. When we introduced the bill we referred only to employees, but it was realized that retired employees could be faced with the same difficulty, and in times of inflation may be the problems of the retired employees could become more acute than those of the active employees. We introduced "retired employees" wherever necessary, namely on lines 36 and 38; after the word "employee" we add the words "or retired employee".

Section 12 dealing with the housing plans was not amended.

Section 13 was not amended. Originally there was another section 13 which was dropped. It was dropped because of the enactment of the Ontario Securities Commission regulations. This amendment had to do with certain technical problems involved in the preparation of our prospectus for issue purposes. When the new regulations came into force it was realized that the proposed amendment was no longer necessary, or would no longer be applicable.

The present section 13, dealing with the record date for meeting, has not been changed.

Section 14 has not been changed.

**The Chairman:** Are there any questions of Mr. de Grandpré or any of the other witnesses?

**Senator Croll:** Mr. de Grandpré, what is your practice in making loans to employees or retired employees?

**Mr. de Grandpré:** We have under the jurisdiction of the board of directors a fund set up annually under the Canada Corporations Act. This fund is fixed at \$10,000 a year. The fund



has not, to my knowledge, been exhausted from year to year and it is also replenished from year to year. Approximately \$6,000 or \$7,000 a year is used out of the fund. As far as repayments are concerned our experience has been excellent.

**Mr. Marcel Vincent, President, the Bell Telephone Company of Canada:** Only ten employees are involved. It is a very small operation.

**Senator Croll:** What are your practices under section 12?

**Mr. de Grandpré:** That is the housing plan. It became apparent to us that it was a necessary amendment when we had to deal with a special situation on transferring a lot of our employees to what is sometimes called a boom town, when you have a new development due to mining operations or other purposes. These employees are moved to the area and for the first weeks or months they live in common housing accommodation. Eventually they move their families in and buy houses. Sometimes these boom towns just collapse and they become, not ghost towns, but almost ghost towns, and sometimes the employees have a serious problem on their hands.

In one such situation which developed we had to appoint independent arbitrators to fix the value of the houses and then charge the employees a certain amount of rent for the period of occupancy of the house during the term of employment in the area. There was no market for these houses and the employees were in a very serious predicament. It was decided that we would buy back the houses so that we would give them the equity they had put into the house. We are carrying them right now and it appears that this area is coming to life again and we will be able to sell the houses either back to our own employees or to others. We are carrying these houses so that the employees will not be forced to carry them for very long periods.

**Senator Croll:** Does it involve a great deal?

**Mr. de Grandpré:** I do not know how many it is.

**Mr. Vincent:** There are only six or eight involved. It is a very small number of houses. We have run into that difficulty once in about 10 or 15 years.

**The Chairman:** Any other questions?

**Senator Hollett:** You say:

Persons becoming shareholders in the period between the cutoff date and the meeting will not have the right to attend and vote.

Why not?

**Mr. de Grandpré:** Because there must be a cutoff date when you have 259,000 shareholders. They buy their shares but to transfer them on the books of the company could take some time. This is the only way to control the meeting. As a matter of fact, when this clause was discussed with the Department of the Registrar General at the time, he asked me whether I thought that fifteen days was enough. He had the opposite reaction. I told him at the time that this was certainly on the low side. It was a very minimal period, but on the other hand with present day computer operations we think we can very well meet this target and do it without any difficulty.

**Senator Hollett:** In other words, if I become a shareholder twenty days before the meeting is called, I have the right to vote?

**Mr. de Grandpré:** Yes, of course.

**Senator Hollett:** I understand. I did not like the words concerning the right to vote, but I understand now that I would have the right to vote.

**Senator Flynn:** I move that we report the bill.

**The Chairman:** One moment, please. I have some correspondence, some letters addressed to the House of Commons Committee, which did not reach that committee in time. Therefore, they have been referred to us.

There are three letters. Two of them are favourable to the company in its application and perhaps I do not need to deal with them, though I might mention who wrote them. One is from the Reverend G. B. Armstrong, Box 403, Bracebridge, Ontario. Another is from Mr. Roy E. Belier, of Toronto.

The third is from Mrs. Vivian M. Garner, Midhurst Village, Ontario. Without reading her letter or putting it on the record, I might read a sentence or two, and ask the officials, who have seen this letter, to say what they wish in connection with it. The letter reads, in part:

We live in a small residential community just outside the city of Barrie. The only service available is a grossly overcrowd-



ed party line system and after 4 p.m. or weekends the line is virtually unavailable. On our line I personally know of two families, one with five children and one with four or five, which increases the load tremendously.

Then she says that she asked for better service but has not been able to get it. She ends up with a suggestion:

If the Bell will not act responsibly and as telephones are now a necessity, is it not up to the Government to step in? I am not alone in my opinion and can provide a petition asking for public control of the Bell Telephone Co. i.e. by the Government and am seriously considering doing so.

**Mr. Scrivener:** Mr. Chairman, Mrs. Garner has a point. This is a rural area, or was a rural area, five miles outside Barrie. About four years ago we acquired the system there from a small company which had crank phones, and so on. We rebuilt the lines and provided dial service from Barrie. About a year ago, a sizeable amount of building activity started to develop there and Midhurst Vil-

lage started to change from a rural community to a suburban community.

We are in the process now of advancing plans to provide individual line service, equivalent to the Barrie service. I sympathize with Mrs. Garner and agree that with a lot of people on the line, and many young people who use phones, it is not satisfactory. I would think that, within a reasonably short time, we would have this straightened out.

**The Chairman:** Are there any other questions? If not, Senator Flynn has moved and Senator Croll has seconded that we report the bill without amendment. I understand you do not wish to go through it clause by clause.

**Hon. Senators:** Agreed.

**The Chairman:** On behalf of the committee, I wish to thank Mr. Vincent, Mr. de Grandpré, and Mr. Scrivener for having come here.

**Mr. de Grandpré:** Thank you, Mr. Chairman.

The committee adjourned.

## APPENDIX "A"

## THE SENATE OF CANADA

## BILL C-104

## AN ACT RESPECTING THE BELL TELEPHONE COMPANY OF CANADA

*Explanatory notes*

The Bell Telephone Company of Canada was incorporated in 1880 under a Special Act of the Parliament of Canada, which set forth the Company's powers and limitations, its rights and responsibilities. It has been amended from time to time to bring it into line with current requirements—most recently in March 1965 when the number of directors was increased.

## CLAUSE 1

Authorizing the Company to use the abbreviated form of its corporate name, Bell Canada, to designate the Company.

For many years the Company has been identified officially and legally only by its name in full in either English or French. For convenience and variety a number of abbreviated forms have been used (the Bell, Bell Telephone, the Bell Company, Bell Canada), but none was legally sanctioned and only "Bell Canada" could be used in either French or English context. This clause would give legal status to the term "Bell Canada", authorizing its use in official documents as equivalent to the full names: The Bell Telephone Company of Canada, or La Compagnie de Téléphone Bell du Canada.

## CLAUSE 2

Authorizing the increase of the capital stock of the Company from One Thousand Million Dollars (\$1,000,000,000) to One Thousand Seven Hundred and Fifty Million Dollars (\$1,750,000,000).

This would increase from \$1,000,000,000 to \$1,750,000,000 the total value at par of capital stock authorized by Parliament, to be issued by the Company from time to time. In terms of our present \$25 par value common stock, this would increase the Company's authorized share capitalization to 70 million shares from the present level of 40 million.

Similar increases in authorized capital have been granted by Parliament as the need developed over the years. Most recent occasion was in 1957 when capitalization was increased from 20 million shares to the present level of 40 million shares.

To date the Company has issued or committed about 35,000,000 shares of stock having a total par value of over \$875,000,000. Shares already authorized by Parliament and still available for issuance therefore total almost 5,000,000 with a par value of nearly \$125,000,000.

Financing for 1967 and 1968 will involve both bonds and stock and will further deplete the capital reserves (unissued or treasury shares). Indications are that the total capital now authorized will be exhausted by mid-1968 so that it will be impossible for the Company to raise the necessary money for future construction through issues of capital stock.

To continue to fulfill its service obligations, the Company's equipment and facilities must keep pace with the changing patterns and character of customer need and with radical advances in communications technology. This implies continuous forward planning to ensure availability of the financial resources required to support the related programs of construction and modernization.

In 1957, when our capitalization was last adjusted by Parliament, the Company forecast construction expenditures of some \$962,000,000 for the five year period, 1958 through 1962, to meet the growing communications needs of customers. Actual expenditures during that period were \$999,000,000, financed partly through internal sources and partly through the issuance of additional debt (bond) and equity (share) capital.

Present forecasts indicate that the \$750,000,000 (par value) in additional equity authorization now requested will be sufficient to meet the Company's need for new share capital for a period of between eight and 10 years. It is

noted that the authorization granted in 1957, when exhausted, will have been adequate for approximately 10 years.

#### CLAUSE 3

Authorizing the Company to issue part of its capital stock as preferred shares.

Section 162 of the Canada Corporations Act provides three possible methods of obtaining authorization for financing by preference shares: (1) by unanimous vote at a general meeting of shareholders representing two-thirds of issued capital; (2) by unanimous sanction in writing by *all* shareholders; or (3) if shareholders representing three-quarters of the total shares outstanding give their sanction, then the Governor-in-Council (the Governor General acting on the advice of the Federal Cabinet) may approve it if he sees fit.

For a company of average size at least one of these alternatives is practicable. However, in the case of Bell with more than 259,000 shareholders, it is most unlikely that the Company could ever meet either of the first two alternatives for approval of preference shares. Alternative (3) could be used, but it would involve the cumbersome and time-consuming procedure of an appeal to the Cabinet. The proposed amendment to the Company's Act of Incorporation appears to be the most practical solution.

Many investors (both individuals and institutions) include preferred shares in their investments. While the Company does not have immediate plans for issuing preferred shares, authority from Parliament would open the door to this third method of raising capital should the need arise. The actual terms and conditions surrounding such an issue would not be decided until such time as the Company should decide to offer preference shares.

#### CLAUSE 4

Authorizing the issue of capital stock for cash or by instalments.

This clause is designed to confirm and make clear that the Company has the same rights with respect to the issuance of shares as those normally granted to companies incorporated under Letters Patent. Thus the Company may—but is not necessarily required to—issue its shares subject to call, and may offer them on other terms as well: with the subscription price to be paid on allotment, or in specified instalments, or in full at the time

of subscription. It will also confirm and make clear that existing shareholders are eligible to subscribe for new stock.

#### CLAUSE 5

Confirming that two-thirds ( $\frac{2}{3}$ ) of the votes cast at a meeting of shareholders are sufficient to authorize the directors to issue bonds.

The present wording of the Act is ambiguous and has been interpreted to mean two-thirds of all shares outstanding. The purpose of this clause is to make clear that it is the vote of two-thirds of the *shares represented at the meeting* and not the vote of two-thirds of the *total outstanding stock* that is required to authorize the directors to issue bonds.

#### CLAUSE 6

Altering the Company's powers so as to include transmission, emission and reception of intelligence by any electromagnetic system.

This clause is designed to update the Company's Act of Incorporation in line with modern advances in technology. Many of the services the Company is called upon to provide, and most of the methods and equipments used today, were not even foreseen when the Act was originally written. The proposed wording is in line with modern terminology and with modern trends in communications research and development as well as with the definition of "telecommunications" contained in the Radio Act. This modern definition is required if we are to meet the service demands of our customers and to remain strong and competitive in the telecommunications field.

#### CLAUSE 7

Authorizing the Company to invest in companies engaged in research and development work.

This amendment is designed to enable the Company to invest in organizations carrying on research and development work related to the Company's objects, and would, for example, enable the Company, alone or with others, to create and support a research and development company divorced from sales pressure and other aspects of a commercial operation that are incompatible with sophisticated research.



### CLAUSE 8

Authorizing the Board of Directors of the Company to elect an Executive Committee having a quorum of three members.

Under the Canada Corporations Act most federally incorporated companies have the power to appoint an Executive Committee with authority to act for the Board of Directors in the more efficient discharge of certain duties and functions. Bell Canada does not automatically have this power because specific reference to it was not included in the Company's Special Act of Incorporation. The Company's present Executive Committee does not have executive powers; its actions must subsequently be ratified by the full Board. This clause would confer on this Company powers equivalent to those granted by the Canada Corporations Act and put Bell Canada on the same basis as most other large companies.

### CLAUSE 9

Authorizing the shareholders to indemnify out of the funds of the Company, and hold harmless the directors of the company, for things done in the execution of the duties of their office.

As in the case of the preceding section, this clause would simply put the directors of this Company on the same footing as those of any company incorporated by Letters Patent under the laws of Canada.

### CLAUSE 10

Substituting, in Section 3 of Chapter 67 of the Statutes of Canada 1880, the word "telecommunication" for the word "telephone."

In 1880, when the Company's Act of Incorporation was written, the term "telephone" was understood to cover every aspect of the industry and its activity. In recent times the term "telecommunication" has tended to replace "telephone" in legislative terminology.

Providing that the height of telecommunication wires shall be subject to the rules and regulations of The Board of Transport Commissioners for Canada.

Our Act of Incorporation requires that the Company's wires in cities, towns and incorporated villages be not less than 22 feet above street level. Transport Board regulations stipulate that telecommunication wires be placed below power lines at crossings and where both are carried on the same poles.

But the height of power lines in Quebec and Ontario is generally between 16 and 20 feet, in accordance with the code issued by the Canadian Standards Association. This clause seeks to place in the hands of the Board of Transport Commissioners authority for regulating all aspects of this matter.

### CLAUSE 11

Authorizing the Company to make loans to employees during periods of adversity or illness even though they are shareholders.

The Company provides for its employees a "security package" consisting of a number of different but related elements. Two of these are a non-contributory pension plan and a voluntary stock purchase plan; taken together they are expected to form the basis of each employee's post-retirement income.

It is clear that an employee forced to sell all his holdings of Company stock under stress of a temporary financial setback might be creating serious post-retirement problems.

This clause would permit retention of savings held in the form of Company stock when temporary loans are made to employee-shareholders to tide them over periods of financially debilitating illness or other extreme adversity.

### CLAUSE 12

Authorizing the Company to provide housing assistance to employees in the course of their employment.

This clause would permit the Company to purchase or otherwise acquire residences of employees whom it has transferred and who have been unable to dispose of their properties without undue loss. In an organization whose business requires a high degree of employee mobility, such an arrangement is necessary for the efficient deployment of personnel within the organization.

### CLAUSE 13

Fixing the record date for shareholders' meetings at not more than 15 days before any such meeting.

As the law stands at this time all shareholders of the Company—even those who purchased their shares on the day before a shareholders' meeting—are entitled to attend and vote at such meeting.



With more than 259,000 shareholders, it is virtually impossible to advise all newly acquired shareholders of the place and time of the meeting, to obtain their proxies and to determine the number of shares represented at such a meeting.

This clause permits establishment of a cutoff date, up to 15 days before a meeting. Persons becoming shareholders in the period

between the cutoff date and the meeting will not have the right to attend and vote.

#### CLAUSE 14

Repealing obsolete provisions of the Act of Incorporation and subsequent amendments thereof.

The items dealt with in this clause have all been superseded or made redundant by subsequent legislation and should be removed from the record.











First Session—Twenty-eighth Parliament

1968

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

---

The Honourable Gunnar S. Thorvaldson, *Acting Chairman*

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No. 1

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*Complete Proceedings on Bill S-5,*

intituled:

“An Act to amend the Canadian Overseas Telecommunication Corporation Act”.

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THURSDAY, OCTOBER 3rd, 1968

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WITNESSES:

*Canadian Overseas Telecommunication Corporation:* D. F. Bowie, President and General Manager; G. M. Waterhouse, Vice-President, Finance.  
*Department of Transport (Post Office:communications):* F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau; J. R. Marchand, Chief, International Policy Division, Government Telecommunications Policy and Administration Bureau.

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REPORT OF THE COMMITTEE

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THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Acting Chairman*

The Honourable Senators

Aird,	Kinnear,
Aseltine,	Lang,
Beaubien ( <i>Provencher</i> ),	Lefrançois,
Bourget,	Leonard,
Burchill,	Macdonald ( <i>Cape Breton</i> ),
Connolly ( <i>Ottawa West</i> ),	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips ( <i>Prince</i> ),
Gélinas,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Thompson,
Hollett,	Thorvaldson,
Isnor,	Welch,
Kickham,	Willis—(43).
Kinley,	

*Ex officio members:* Flynn and Martin.

(Quorum 9)

## ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Tuesday, October 1, 1968:

"Pursuant to Order, the Honourable Senator Langlois, moved, seconded by the Honourable Senator Boucher, that the Bill S-5, intituled: "An Act to amend the Canadian Overseas Telecommunication Corporation Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, October 3rd, 1968.

(1)

Pursuant to Rule and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

Upon motion, the Honourable Senator Thorvaldson was elected *Acting Chairman*.

*Present:* The Honourable Senators Thorvaldson (*Acting Chairman*), Burchill, Desruisseaux, Flynn, Fournier (*Madawaska-Restigouche*), Hayden, Isnor, Kinley, Kinnear, Lefrançois, Macdonald (*Cape Breton*), McDonald (*Moosomin*), McElman, McGrand, Molson, Pearson, Rattenbury and Smith (*Queens-Shelburne*).—(18)

*Present, but not of the Committee:* The Honourable Senator Langlois.

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-5, "An Act to amend the Canadian Overseas Telecommunication Corporation Act", was read and considered clause by clause.

The following witnesses were heard:

*Canadian Overseas Telecommunication Corporation:*

D. F. Bowie, President and General Manager.

G. M. Waterhouse, Vice-President, Finance.

*Department of Transport (Post Office: communications):*

F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau.

J. R. Marchand, Chief, International Policy Division Government Telecommunications Policy and Administration Bureau.

On motion of the Honourable Senator Macdonald (*Cape Breton*) it was *Resolved* to report the said Bill without amendment.

At 10.35 a.m. the Committee adjourned.

**ATTEST:**

Frank A. Jackson,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, October 3rd, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill S-5, intituled: "An Act to amend the Canadian Overseas Telecommunication Corporation Act", has in obedience to the order of reference of October 1st, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

Gunnar S. Thorvaldson,  
*Acting Chairman.*

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

**Ottawa, Thursday, October 3, 1968.**

The Standing Committee on Transport and Communications, to which was referred Bill S-5, to amend the Canadian Overseas Telecommunication Corporation Act, met this day at 9.30 a.m. to give consideration to the bill.

**The Clerk of the Committee:** Honourable senators, the first order of business is the selection of a chairman. May I have a motion?

**Senator McDonald:** Honourable senators, I would like to nominate Senator Thorvaldson as Acting Chairman.

**Senator Molson:** I will second the motion.

**The Clerk of the Committee:** It has been moved by Senator McDonald, and seconded by Senator Molson, that Senator Thorvaldson be the Acting Chairman of the committee. Is it agreed?

**Hon. Senators:** Agreed.

**Senator Gunnar S. Thorvaldson (Acting Chairman)** in the Chair.

**The Acting Chairman:** We have before us this morning Bill S-5, an act to amend the Canadian Overseas Telecommunications Corporation Act. May we have the usual motion to print?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

**The Acting Chairman:** Honourable senators, our witnesses this morning are from the Canadian Overseas Telecommunications Corporation, Mr. D. F. Bowie, President and General Manager, Mr. G. M. Waterhouse,

Vice-President of Finance; and from the Department of Transport (Post Office Communications) Mr. F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau, and Mr. J. R. Marchand, Chief of International Policy Division, Government Telecommunications Policy and Administration Bureau.

I should say, at the outset, that the Canadian Overseas Telecommunications Corporation has now been taken over by the Post Office Department and it is no longer a division of the Department of Transport.

**Senator Flynn:** What do you mean, Mr. Chairman? Is it under the authority of the Postmaster General?

**The Acting Chairman:** Yes, it is under the authority of the Postmaster General, the Hon. Mr. Kierans.

**Senator Smith (Queens-Shelburne):** What you really mean is that the crown corporation will report to Parliament through the Postmaster General, who will be the new minister of communications.

**The Acting Chairman:** That is right. Is it your wish that we hear Mr. Bowie, the President and General Manager of the corporation.

**Hon. Senators:** Agreed.

**Mr. D. F. Bowie, President and General Manager, Canadian Overseas Telecommunications Corporation:** Thank you, Mr. Chairman. This bill was produced for two good reasons. The first is self-explanatory, with respect to the removal of the wording which permitted the corporation to operate services between the mainland of Canada and Newfoundland. At the time the corporation was established in 1950, or when the bill was first written in 1949, the status of Newfoundland was different from what it is today. Up to that time, the

Canadian Marconi Company had been operating service between Newfoundland and the mainland. When the corporation expropriated the assets of the Canadian Marconi Company, which was located at Drummondville and Yamachiche, it was quite impossible to segregate one small piece of equipment from the whole of the overseas operation of Marconi and consequently we took over the radio facilities which Marconi was operating between Newfoundland and the mainland.

This continued, and in the intervening years C.O.T.C. introduced many new facilities and improved the service with Newfoundland. But we had felt that as Newfoundland had become the tenth province, it was better that C.O.T.C. should get out of this operation and restrict itself strictly to overseas services. After a year or two of negotiations we reached agreement with the Canadian National Telegraphs—the Canadian National Telecommunications—to lease facilities which we had built in the meantime and to permit the Canadian National to undertake the operation between Newfoundland and the mainland.

Therefore, there is no need for the C.O.T.C. Act to provide for the corporation to give this service. That is the reason for the first and second of these amendments.

The third one, which has to do with the amount of money that we can spend without authority of the Governor in Council, is I think a very important one. When the C.O.T.C. Act was written in 1949-50, we were permitted to spend up to \$50,000 without the necessity of getting an order in council. With the corporation in the very small field in which it was working in those days, and the limited facilities we had, and the small revenue which we were getting, this seemed to be fairly reasonable. We have worked under that control during the last eighteen years. I think most people will readily agree that in this day and age one cannot buy much equipment in the electronics field for \$50,000.

The securing of an order in council involves considerable clerical work. There has to be a board meeting to authorize the president to request an order in council; there is the submission which goes to the minister, 25 copies of which go to the Treasury Board. We feel that that particular clause has rather outlived its usefulness and that the board of directors of C.O.T.C. should be given power to authorize expenditures of larger amounts than \$50,000 without the necessity of bothering the minister and the Treasury Board, and

we would like to see this amount substantially increased. Our board of directors are all wise businessmen and they keep their finger on the pulse. It seems reasonable, I suggest, that they should be given the necessary authority to authorize expenditures for a larger amount than is at present provided.

**Senator Hayden:** Do you contemplate in clause 3 of the bill that there will be a regulation fixing maximum amounts or will you have to go to the Governor in Council each time for a regulation?

**Mr. Bowie:** We would expect that a regulation would be made fixing the maximum amount for the time being, which could be subject to change if conditions change.

**Senator Hayden:** You must have some idea in mind as to what that maximum amount should be at this time.

**Mr. Bowie:** We are thinking in terms of half a million dollars.

**Senator Hayden:** Would you agree that it is preferable to have a maximum amount than to have authority in the Governor in Council by regulation which can be varied from time to time? Is not this in the nature of legislation rather than administration?

**Mr. Bowie:** I am perhaps a little out of my depth in this one, sir. I believe this may be attributed to Government policy, but it does seem to me as a layman, if I may say so, that we should do this, rather than have any necessity to change the act, if we want to change the amount of money that the directors are authorized to spend.

**Senator Hayden:** On the other hand, the Senate, and even some Members of the Commons, might think it wise to know when you have ideas of big expenditures, so that we might have a look at them before you spend them.

**Mr. Bowie:** That could be true, sir.

**Senator McDonald:** What are your revenues today, compared to ten years ago, Mr. Bowie?

**Mr. Bowie:** Our current revenues are running in the neighbourhood of \$26 million to \$27 million. I have the figures here somewhere, but I can tell you off the cuff that the C.O.T.C. revenues, in its first year, were somewhere in the neighbourhood of \$800,000.

**Senator Flynn:** Are you speaking of profit or revenue?



**Mr. Bowie:** Revenue.

**Senator McDonald:** That was in 1950?

**Mr. Bowie:** Yes.

**Senator McDonald:** Have you the figure for 1960 so that we would have some idea of the growth?

**Mr. Bowie:** May I refer to Mr. Waterhouse?

**The Acting Chairman:** Honourable senators, Mr. G. M. Waterhouse is Vice-President, Finance, of the Canadian Overseas Telecommunications Corporation.

**Mr. Bowie:** I am sorry, but it seems that we do not have the individual revenue figures for each of the years. I could give you the revenues for 1962, if this would do? We have those figures in the annual report.

**Senator McDonald:** Yes.

**Mr. Bowie:** In 1962 the revenues were slightly short of \$9.5 million. In 1968, for the year ending March 31, 1968, they were just short of \$25 million; and this year they are running well over \$26 million.

**Senator McDonald:** Your net profits in 1962 were \$1.7 million compared to \$4 million in 1968.

**Mr. Bowie:** That is correct.

**Senator McDonald:** Is that attributable to an extension of services, an increase of revenues or is it otherwise accounted for?

**Mr. Bowie:** It is attributable to a lot of things, really, such as the extension of services and, of course, vastly increased demand. The introduction of telex service has been one of the outstanding features; that, together with the introduction of good quality telephone service in 1956, and our increased capacity, has provided a tremendous growth in telephone revenues. I might say that in 1961 we cut the telephone rates between Canada and Britain by 25 per cent.

**Senator Rattenbury:** As the service is being used increasingly, do you anticipate further reductions?

**Mr. Bowie:** Yes, we do.

**Senator Kinley:** Have you made a profit?

**Mr. Bowie:** Yes, we made \$4 million in the last fiscal year. We also paid an almost similar amount in income tax, and we pay the Government \$2.5 million on interest charges.

**Senator Molson:** What is the rate?

**Mr. Bowie:** It is a varying rate, according to whatever the current rate is at the time we make a loan.

**Senator Hayden:** Do you mean the current rate on treasury bills or the going rate on the market?

**Mr. Bowie:** It is on the treasury bills.

**Senator Kinley:** How is your board constituted? You are a crown company, I presume.

**Mr. Bowie:** Yes.

**Senator Kinley:** How do you appoint your directors?

**Mr. Bowie:** They are appointed by the Government.

**Senator Kinley:** For what period of time?

**Mr. Bowie:** They normally have a three-year term.

**Senator Kinley:** Have you any international relations with the United States? You must have, because telecommunication is an international thing.

**Mr. Bowie:** Yes. We work in very close conjunction with the American communications carriers. In fact, we help each other out in times of trouble. But C.O.T.C. does not actually do normal communications business between Canada and the United States. This is done by the Bell Company and the Trans Canada Telephone System and the Railway Telecommunications Carriers.

**Senator Kinley:** I remember when the communication cables were being laid off the coast of Nova Scotia. I believe both Americans and Canadians were in on that. They were trying to make sure it would be safe for the fisheries industry. The manager of nautical operations was there. I seemed that those communication cables were very valuable.

**Mr. Bowie:** They are certainly very valuable, and we have in some cases joint ownership in cables with the Americans. This has been done in order not to duplicate unnecessarily facilities at the time. We felt that we were putting in adequate facilities that would last for many, many years. But the communications explosion proved those estimates to be quite wrong. At the present time we are actively concerned with an organization

called Intelsat, which is the International Satellite Organization. The corporation has an ownership in that group. More and more we are using satellite circuits for communications across the North Atlantic.

**Senator Smith (Queens-Shelburne):** I have a supplementary question on the same point, Mr. Chairman. Since this first satellite station has been in commercial operation, have you had any indication whether it is going to be profitable? Is it profitable now in view of the volume of work that is going through that station?

**Mr. Bowie:** Well, it will be profitable. There is no question about that. At the moment, it is actually a little difficult to cost it in such a form as to answer yes or no as to whether it is running a profit at the present time. But it is performing an extremely useful function for us, because the cable capacity we have existing is insufficient, and therefore at the present time all the growth is going on to the satellite system. Growth being what it is in the telephone field, it is going up 15 to 18 per cent per annum. So it will not be very long before the earth station and satellite operation will be a completely profitable one.

**Senator Smith (Queens-Shelburne):** I suppose that is the obvious reason why you are now extending the capabilities of that particular station. I know something about it because it happens to be in my own area in Nova Scotia.

**Mr. Bowie:** In this field it is rather essential to try to keep ahead of the game, rather than behind it. But it is difficult because any forecasts that we have been able to make in the past have proved rather wrong, in that we have not made adequate provisions. But we are doing our best to do so now.

**Senator Hayden:** It does not do to get yesterday's message tomorrow.

**Mr. Bowie:** No.

**Senator McDonald:** Do you have any projection of your capital investments over the next five or ten years?

**Mr. Bowie:** I do, sir, yes. We have just been asked to provide this information, as a matter of fact. So we have as accurate a forecast as possible for the next five years.

In the year 1969 to 1970 we expect to spend \$13.3 million; in 1970-71, \$15.4 million; 1971-72, \$23.9 million; 1972-73, \$20.3 million; and

in 1973-74, we come back to earth, having only \$8.6 million.

**Senator McDonald:** These are capital expenditures?

**Mr. Bowie:** Yes.

**Senator McDonald:** Have you any projected profits for the same period?

**Mr. Bowie:** No, sir. I would hazard a guess that they will be going up.

**Senator Rattenbury:** Is there any pooling of assets with the corporation by any private communications firms?

**Mr. Bowie:** In Canada?

**Senator Rattenbury:** Yes.

**Mr. Bowie:** No, sir.

**Senator Molson:** Mr. Chairman, coming back to clause 3, I take it that the authority the president is speaking about is in the nature of capital amounts as in subclause (2) (a): "under any agreement or lease," or (2) (b): "real or personal property...".

I take it that when he says that the company is thinking of asking for authority in terms of half a million dollars this is dealing with capital items and that, in the normal course of business, they act like a normal corporation and have no absurd or unreasonable limitations.

**Mr. Bowie:** This is true, sir. We are talking here in terms of capital expenditures and we do have no unreasonable limitations apart from this existing one which we feel is not unreasonable.

**Senator Molson:** Talking about a sum of the nature of half a million dollars, that is the first of forecast commitments such as you have just set forth for a good many millions of dollars each year.

**Mr. Bowie:** Yes.

**Senator Molson:** So that you will be going for authority on a good many occasions?

**Mr. Bowie:** We shall be, yes. I think it might be useful to add that the corporation can never go very far off the track because anything we do has a slightly international connotation and you can be quite certain that one of the first things I have to do is to make sure that my minister agrees with the sort of thing we are thinking about. So that our

really has a considerable amount of government blessing on what we do before we do it.

**Senator Flynn:** Mr. Chairman, presently subsection (2) reads—

“Unless the approval of the Governor in Council is first obtained, the Corporation shall not...”

I was wondering if the witness would agree that presently the Governor in Council could by order in council prescribe or adopt regulations prescribing higher limits than those which are contained in subparagraphs (a), (b) and (c) of the subsection as it now reads. In other words, is it absolutely necessary that we have this amendment? It seems to me that the Governor in Council could give you generally higher authority than is provided in the act.

**Mr. Bowie:** Well, I must respond to that by making a very simple statement. I am not a lawyer so I could not interpret that myself. I must say that the experience has been that the Treasury Board and the Auditor General are very insistent in every case so I would expect that they would have looked at this from that angle.

**Senator Flynn:** I have a second point. Has the corporation compared the authority which was given or which will be given under regulations by the Governor in Council with the authority granted to other crown corporations like C.N.R., for instance, or C.B.C.? Have you a special regime here?

**Mr. Bowie:** No, we did not compare.

**Senator Flynn:** I was wondering whether we should not spell out the authority which the corporation should have rather than leave it to the fancy of the Governor in Council. After all, the Governor in Council may change his mind and could by changing the regulation take away all practical authority from the board.

**Mr. Bowie:** They could, yes, but one would hope that they would not take such a retrograde step.

**Senator Flynn:** Am I correct in suggesting that the C.N.R. only has to obtain the approval of its annual budget from the Governor in Council?

**Mr. Bowie:** I am afraid I don't know the answer to that one.

**The Acting Chairman:** Senator Flynn, I wonder if it would be helpful if I read subsection (2) of section 8 which is affected by clause 3 of the bill. It reads this way:

“(2) Unless the approval of the Governor in Council is first obtained, the Corporation shall not

(a) enter into an agreement involving any expenditure in excess of fifty thousand dollars;”

That is the wording of the present limitation.

**Senator Burchill:** I would like to ask about the fixing of rates. Are you the sole authority for the fixing of rates?

**Mr. Bowie:** We do have that authority, yes.

**Senator Burchill:** You are not subject to any public utility commission or anything like that?

**Mr. Bowie:** No.

**Senator Burchill:** You fix your own rates?

**Mr. Bowie:** Yes.

**Senator Burchill:** You are outlining a large capital expenditure for the future and that money must earn certain returns.

**Mr. Bowie:** Yes.

**Senator Burchill:** And you fix your rates, I presume, based on your business experience. How is that done? Is it done by your directors?

**Mr. Bowie:** No. There is another very important factor concerned with the fixing of rates and it is that in the international field you only work half the system. You have a foreign country which operates the distant end, and your rates have to be fixed or you have to agree your rates with them so that they make enough money to suit themselves, and we for our part have our end of the operation also and we have to make an adequate return. This is sometimes very difficult. I hope I do not have to go too far into a piece of unknown currency called the gold franc which is the basis of settlement of all international accounts. Since Canada with a lot of other countries went off the gold standard in 1931 the relationship between our currency and the mythical gold franc has been reduced. Actually our rates for a telegram from here to France are considerably lower than the rates for a telegram from France to Canada. This comes about because when the



French franc was devalued in 1931, they raised their charges against the public. We kept ours here as they were. That means from time to time this gives rise to some international controversy. Perhaps it shows other countries up in a poor light by comparison with what we in Britain and a few other countries did which was to maintain the rates at a lower level.

**Senator Smith (Queens-Shelburne):** I want to ask a question about relationships between the old Department of Transport and your corporation. At the time of the building of the station in Mill Village, am I correct in assuming that the Department of Transport financed that and arranged for its construction? And that being so, what is your position between the Government and the contractor?

**Mr. Bowie:** We had no direct dealings with the contractors at all. This was done by the Department of Transport. We are at the present time using the station pending the completion of the one which is now under construction, and I think I should add that we had to put in certain equipment to make it operational from a commercial point of view as distinct from the original intention which was research and experimentation. But for actual commercial operations we had to add quite a substantial amount of extra equipment.

**Senator Smith (Queens-Shelburne):** Well, then, has the title been turned over? Does the ownership still reside with the Department of Transport?

**Mr. Bowie:** The ownership still resides with the Department of Transport.

**Senator Smith (Queens-Shelburne):** Is there any lease in this arrangement between the corporation and the department for their use of the facilities?

**Mr. Bowie:** The answer to that is that I think we do have a dollar; we have an informal dollar arrangement.

**Senator Smith (Queens-Shelburne):** What I was coming to was this. It would be difficult, perhaps, in the future, when this is really a profitable enterprise, to determine just how profitable it is, unless this is put on your accounting system as a capital expenditure—but I guess that is not my worry or yours.

**Mr. Bowie:** I think this is a bridge we will cross later on, sir.

**Senator Hayden:** Mr. Bowie, have you made any repayments on capital accounts for the borrowing to date?

**Mr. Bowie:** We certainly have. We have repaid to the Government \$16.3 million.

**Senator Hayden:** Then the moneys in your program for this year and next year are amounts you figure you will spend; they are not necessarily the amounts you will borrow, are they?

**Mr. Bowie:** This is true, yes, because some of that financing we shall do out of our own profits.

**Senator Molson:** What is your cash throw-off in the normal year? I have not got your statement. Last year, for example, you had a profit of \$4½ million. What was your depreciation and other non-cash items?

**Mr. Bowie:** The depreciation last year was \$5,891,000.

**The Acting Chairman:** Honourable senators, while we are on these financing aspects, I wonder if I might take the liberty, as I have before me the act, of reading one subsection here. There was a question with regard to the interest rate paid by the corporation to the Governor in Council, and I would refer to section 14, headed "Financing," subsection 3, and I think it would be of interest to know how that is arrived at.

Interest on the moneys paid to the Corporation under this section shall be paid by the Corporation to the Receiver General of Canada at such times and at such rates as may, from time to time, be fixed by the Governor in Council.

So, when the witness refers to the rate being the treasury bill rate, that is because that is the rate fixed by the Governor in Council.

Go ahead, Mr. Bowie. Would you like to carry on with your presentation after these questions, or were you through?

**Mr. Bowie:** I think I was really through. There is just one point I might mention, if I may. Under section 8(2)(c) we have to seek an Order in Council for disposing of any equipment that had an original or book value exceeding \$5,000. This requires the same amount of paper work and board approvals and so on.

**Senator Hayden:** The price might go down in the meantime!



**Senator McElman:** Mr. Chairman, there are two points I wish to mention. First, I share what appears to be the concern expressed by Senator Hayden regarding the continuing trend of Crown corporations and agencies to overcome the nuisance of coming to Parliament for authorities, and acquiring these by Order in Council. I think it is a very important part of our system, when such agencies or corporations have expanding requirements, which indicate growth in the corporation concerned—as you indicate by your capital requirements of \$81.5 million for the next five years, an average of \$16.3 million a year, a rather substantial sum of money. This provision provides an opportunity for Parliament to remain fully informed on what is taking place in such corporations; it is very necessary. I simply want to express my concern at this growing trend to circumvent the coming to Parliament for such authority.

You have suggested it is government blessing, but government blessing is quite a different thing from parliamentary blessing, and I think such comments should not be passed without that observation.

My second observation is on the new subsection (2) of section 8 that you have proposed, which includes the words:

On the recommendation of the Treasury Board, the Governor in Council may, by regulation prescribe limits ..

Should not that be “shall,” because there you continue on, in the concluding part of that subsection, by saying:

...and unless the approval of the Governor in Council is first obtained, the Corporation shall not exceed...the limits prescribed pursuant to this subsection.

So it can only spend over the limits prescribed with the authority of the Governor in Council. If there are no limits prescribed, then you are scot-free, you can spend to any level, without anybody's authority—that of Parliament or the Governor in Council or the Treasury Board, or anyone.

Should not the first word in the third line be “shall”?

**The Acting Chairman:** Would you care to comment on that, Mr. Bowie?

**Mr. Bowie:** Well, I have to say what I said a little earlier, that I am not a lawyer and I did not actually write that. I do see the point you are trying to make, but I am not sure

whether that is not the normal language used in this type of thing. I just do not know.

**Senator McElman:** Well, I am not concerned with the normal language, but with the actual meaning of the words as they are set out. If the Governor in Council “may,” he also may not.

**Senator Hayden:** Mr. Bowie, if we substituted “\$500,000” in the present subsection (2) for \$50,000, where it occurs, would not that permit very flexible operation, without as much paper work going to the Governor in Council?

**Mr. Bowie:** I have to give you the simple answer: Yes.

**Senator Hayden:** It would be more businesslike, would it not?

**Mr. Bowie:** Yes.

**Senator Flynn:** Is that the figure you had in mind?

**Mr. Bowie:** We did have, yes.

**Senator Desruisseaux:** What are the gross sales?

**Mr. Bowie:** Almost \$25 million.

**The Chairman:** Are there any other questions of Mr. Bowie, honourable senators? If not, we have other witnesses here: Mr. G. M. Waterhouse, Vice-President, Finance, and two gentlemen from the Department of Transport, Mr. Nixon and Mr. Marchand.

Is there any further evidence members of the committee would like from the company?

**Senator McElman:** Could I have an answer from our learned counsel on my question?

**Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel):** Senator, there is a perennial difficulty raised by the words “shall” and “may”. They have filled the law books for a good many years. I must say that the usual way to confer such authority on the Governor in Council is to use the word “may”. Certainly, the Governor in Council will exercise that authority, and it may very well be that, in the context, “may” would be construed as “shall”. The cases are innumerable.

**Senator Flynn:** What if it does not? This is the question put by the senator. If the Governor in Council does not prescribe regulations,

is the corporation free to do whatever it pleases?

**Senator Hayden:** Not in this language. If he does not then the corporation is frustrated with respect to capital expenditures.

Mr. Bowie, I feel very strongly that there should be some dollar amount stipulated. I feel it is more businesslike, and would be more flexible for you than what is provided. We will see what the Commons does about it, but my own view is that there should be dollar amounts, because this may partake of the nature of legislation rather than administration providing maximum limits on the amount of money that you can spend on capital items. That authority must come from somewhere, and I think Parliament should give it, and it should not be delegated to the Governor in Council to deal with by regulation. However, I do not feel so strongly in this case that I would make any motion or change it.

**The Acting Chairman:** Honourable senators, are you ready to consider the bill in detail?

**Senator Molson:** You have a motion.

**The Acting Chairman:** Mr. Nixon, may we ask you if you have anything to add to what has been said by Mr. Bowie and Mr. Water-

house? Mr. Nixon is Director of the Government Telecommunications Policy and Administration Bureau.

**F. G. Nixon, Director, Government Telecommunications Policy and Administration Bureau, Department of Transport (Post Office: Communications):** Thank you, Mr. Chairman. I might only add that in respect to the Government's own departments, the Treasury Board may fix by regulation the limits on expenditure, pursuant to the Financial Administration Act. I can only surmise that the minister felt it would be appropriate to petition Parliament for this same procedure to apply to the corporation.

**The Acting Chairman:** Thank you, Mr. Nixon.

**Senator Macdonald (Cape Breton):** I move that we report the bill, Mr. Chairman.

**The Acting Chairman:** Is there any comment on that, honourable senators? Are you all in favour?

**Hon. Senators:** Agreed.

**Senator Flynn:** With some reluctance.

**Senator Hayden:** Yes, with reservations.

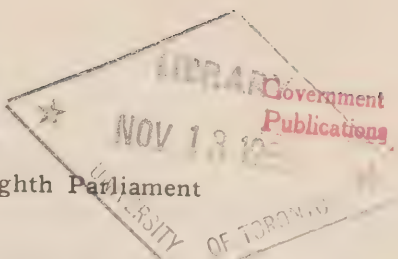
The committee adjourned.

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First Session—Twenty-eighth Parliament  
1968

# THE SENATE OF CANADA

## PROCEEDINGS

### OF THE

#### STANDING COMMITTEE ON

# TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 2

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*Complete Proceedings on Bill C-109,*  
intituled:

An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates.

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THURSDAY, OCTOBER 17, 1968

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WITNESSES:

*Canadian National Railways:* G. M. Cooper, General Solicitor; L. MacIsaac, Chief of Development; N. Michaud, Mining Engineer.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Gunnar S. Thorvaldson, *Chairman*  
The Honourable Senators

Aird,	Kinnear,
Aseltine,	Lang,
Beaubien ( <i>Provencher</i> ),	Lefrançois,
Bourget,	Leonard,
Burchill,	Macdonald ( <i>Cape Breton</i> ),
Connolly ( <i>Ottawa West</i> ),	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips ( <i>Prince</i> ),
Gélinas,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Sparrow,
Hollett,	Thorvaldson,
Isnor,	Welch,
Kickham,	Willis—(43).
Kinley,	

*Ex officio members:* Flynn and Martin.

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 15, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill C-109, intituled: "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, October 17th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-109, intituled: "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", has in obedience to the order of reference of October 15th, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,  
*Chairman.*



## MINUTES OF PROCEEDINGS

THURSDAY, October 17th, 1968.

(2)

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.30 a.m.

*Present:* The Honourable Senators Aird, Bourget, Connolly (*Halifax North*), Dessureault, Flynn, Fournier (*Madawaska-Restigouche*), Hollett, Isnor, Kinley, Kinnear, Lang, Lefrançois, Leonard, Macdonald (*Cape Breton*), McDonald, McElman, Molson, Pearson, Smith (*Queens-Shelburne*), Sparrow and Thorvaldson. (21)

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of Honourable Senator Leonard, Honourable Senator Thorvaldson was elected Chairman.

On motion of Honourable Senator Flynn it was *Resolved* to report, recommending that 800 English and 300 French copies of these proceedings be printed.

Bill C-109, "An Act respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates", was considered.

The following witnesses were heard:

*Canadian National Railways:*

G. M. Cooper, General Solicitor.

L. MacIsaac, Chief of Development.

N. Michaud, Mining Engineer.

Following discussion it was *Resolved* to report the bill without amendment.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

*Attest:*

John A. Hinds,  
*Clerk of the Committee.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Thursday, October 17, 1968

The Standing Committee on Transport and Communications, to which was referred Bill C-109, respecting the construction of a line of railway in the Province of Alberta by Canadian National Railway Company from the vicinity of Windfall on the Windfall Extension to the Sangudo Subdivision of the Canadian National Railway in a westerly direction for a distance of approximately 51 miles to the Bigstone property of Pan American Petroleum Corporation and of a connecting spur extending in a northerly direction for a distance of approximately 9 miles to the South Kaybob property of Hudson's Bay Oil & Gas Company Limited and its associates, met this day at 11.30 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson (Chairman)** in the Chair.

**The Chairman:** Honourable senators, I want to thank you very sincerely for the honour you have conferred on me by electing me to the office of chairman of this committee. This is an important committee of the Senate, as it deals generally with problems of great importance to the economic development of our country. May I say also that this post has been occupied in the past by men of great ability and distinction. I refer first to Senator D'Arcy Leonard, the most recent chairman of this committee, who has now assumed the chairmanship of another committee for which he has special qualifications. May I also refer to the fact that one of the most distinguished senators of our generation, Senator Hugessen of Montreal, occupied this Chair with distinction to himself and great benefit to the committee, to the Senate and to Canada. Senator Hugessen as you know, has now retired from the Senate but he remains a most distinguished citizen and elder statesman of this country.

**Hon. Senators:** Hear, hear.

**The Chairman:** May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

**The Chairman:** We are dealing today with Bill C-109 relating to a construction project of the Canadian National Railway Company. Our witnesses are Mr. G. M. Cooper, General Solicitor of the C.N.R., Mr. L. MacIsaac of the Department of Research and Development, C.N.R., of which he is the Chief of Development. We also have Mr. M. Michaud, who is Mining Engineer engaged with the Department of Research and Development, C.N.R. We also have here from the Department of Transport Mr. Jacques Fortier, Q.C., Counsel for that Department, who has appeared before this committee on many previous occasions in recent years. Is it agreeable, honourable senators, that we should hear from Mr. Cooper first?

**Hon. Senators:** Agreed.

**Mr. G. M. Cooper, General Solicitor, Canadian National Railways:** Mr. Chairman, honourable senators, Bill C-109 makes provision for a grant of authority to Canadian National Railway Company to construct and to finance approximately 60 miles of branch line trackage in Alberta lying northwesterly of Edmonton. The branch line will extend from a point near Windfall, Alberta, to the site of a sulphur recovery plant of Pan American Petroleum at Bigstone. That is 51 miles in length. There will also be a connecting spur, nine miles in length, to another such plant at South Kaybob.

There is a map on the easel here to identify the location and I believe each of you has a copy of this in miniature.

Edmonton, which I am sure is well known to everybody in Canada, appears on the map in the lower portion of the right-hand margin.

**The Chairman:** Honourable senators, may I interrupt for a moment to apologize to Mr. Smith. Mr. Walter Smith is Executive Representative of Canadian National Railways in Ottawa. I am very sorry I failed to recognize him when I was introducing the witnesses and I do so now.

**Mr. Cooper:** From Edmonton in the lower right hand of this map an existing C.N. line extends in a northwesterly direction. That is the upper of the two lines appearing in this location and extends to Whitecourt and beyond to Windfall, both of which names have been highlighted in yellow. The proposed new trackage is that which is marked bright red and extends westerly from Windfall to Bigstone, which is the location of the plant of Pan American Petroleum, with a spur about nine miles in length extending northerly to South Kaybob, where a similar and larger plant is presently under construction by a syndicate headed by Hudson Bay Oil and Gas. In all, there are 60 miles of trackage. The line will cross the Athabasca River, and there is also a small bridge near Bigstone crossing the Little Smoky River.

This legislation is necessary because the corporate powers of our company do not permit us to embark upon such a construction, being in excess of 20 miles, unless Parliament has legislated in respect of the expenditure of the money. This is the purpose of our being here.

Our predecessors have been here many times in the past on very similar applications, and I can assure honourable senators that this bill which is before you today, other than the details of location and the dollar amounts, is just the same as previous bills you have considered. For that reason, I have some doubt whether you want me to review the purpose of the various clauses, but, of course, should you so wish, I will be happy to do so.

**The Chairman:** Honourable senators, in that regard I think it is a fact that these bills authorizing the building of railways are in standard form. They are really very simple. Most of the clauses deal with the financing provisions, which are standard, and, consequently, unless someone would like to ask questions concerning some of those clauses, I would suggest that it is not necessary to go into detail in regard to them. Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Connolly (Halifax North):** What is the revenue anticipation from these extra 60 miles?

**Mr. Cooper:** The annual revenue is in the nature of—

**The Chairman:** Honourable senators, this question relates perhaps more to Mr. MacIsaac's work, and I was going to suggest that when Mr. Cooper has finished his general presentation you would let me call on Mr. MacIsaac, who is chief of the development branch, and then you would have before you the right person of whom to ask the question. Would that be agreeable?

**Hon. Senators:** Agreed.

**Senator Kinley:** This, of course, has been approved by the Pickersgill commission? Do you have to go before them?

**Mr. Cooper:** The Canadian Transport Commission?

**Senator Kinley:** Yes. Do you have to go before them?

**Mr. Cooper:** No. In the case of Canadian National, we come to Parliament through the Governor in Council, and we are not acting under the Railway Act, which would require the recommendation of the Canadian Transport Commission, but because of Canadian National's existence as a Crown corporation our route to Parliament is through the Governor in Council.

**Senator Kinley:** I see.

**Mr. Cooper:** The legislation is, of course, sponsored by the appropriate minister in the House of Commons.

Initially, this line is to serve these two major industries at Bigstone and South Kaybob, and in each case the industry is involved in the production of sulphur by recovery from so-called sour natural gas. The sour gas is received at the plant from wells which have been drilled, and by chemical process the sulphur and certain other derivatives, such as liquid petroleum gas, are stripped off, and the stripped gas will be returned to the earth for storage and subsequent use as domestic or industrial natural gas.

We have some hopes, some justifiable hopes, that other such industries will locate in the vicinity of the mine, and as the line passes through a fairly heavily forested area, we anticipate that in due course a lumbering



or a pulpwood development may take place. At the present time the surrounding countryside is very sparsely populated, if at all, and our reliance is on these two industries. For that reason, contractual guarantees have been obtained from the operators of both plants, to ensure that our construction of the line will result in the shipment of adequate tonnages to cover the costs of operation and of maintenance, the interest on our invested capital, the amortization of that capital, and over and above that, a contribution to the general operating results of the Canadian National system.

**Senator McDonald:** Over what period of time is it to pay off?

**Mr. Cooper:** The contracts run for 15 years, and all the economics are based on that 15-year period.

**Senator McDonald:** Is it sufficient to pay back your capital costs?

**Mr. Cooper:** Yes, the return of the capital.

**Senator Pearson:** Is there a possibility the sulphur will be shipped out by pipeline shortly?

**Mr. Cooper:** Not, I would say, from this area by these industries, because they have guaranteed us the major portion of their production, so that we do not anticipate their diverting the traffic from us, because failure in living up to the guaranteed shipments by them would require them to make a payment to us by way of damages in lieu of the traffic.

**Senator Bourget:** Do they guarantee 75 per cent in the contract?

**Mr. Cooper:** Yes, 75 per cent of their actual production of sulphur.

**Senator Bourget:** But you expect to get more than 75 per cent?

**Mr. Cooper:** We hope to, and we will work to get 100 per cent of the production, but the guarantee is limited, as you say.

**Senator Leonard:** Are they in the planning or the building stage now?

**Mr. Cooper:** The plant at Bigstone is already in production. The plant at South Kaybob is expected to come into production, I think, in November this year—that is, within the month. A further development at Kaybob is now in the planning stage, or is now in the early development stage.

**Senator Leonard:** When will the line come into operation?

**Mr. Cooper:** If we can get going soon enough, we expect it would take us about a year to build the line, and as soon as we have the line built the traffic is waiting for it.

**Senator Fournier (Madawaska-Restigouche):** How are they transporting their product now?

**Mr. Cooper:** The plant at Bigstone is having to truck a certain amount of it to railhead at Windfall, and which is, let us say, the take-off point of the red line on the map.

**Senator Fournier (Madawaska-Restigouche):** By truck?

**Mr. Cooper:** Yes, by trucks.

**Senator McDonald (Moosomin):** Is your company playing any part in the research that is going on with respect to moving that product by pipe line?

**Mr. Cooper:** We have a share in the—I have forgotten the corporate name of the project, but we have a share in that. We get the information from it, and we participate in the studies.

**Senator Isnor:** There are two separate organizations, are there not?

**Mr. Cooper:** Two plants?

**Senator Isnor:** Yes.

**Mr. Cooper:** Yes, sir.

**Senator Isnor:** Are they owned by the same people?

**Mr. Cooper:** No, sir. In each case there is, perhaps I can say, a multiple ownership under the direction in each case of a single corporation. There is a certain overlap of interests, but for practical operating purposes I think you could say they are separately operated.

**Senator Isnor:** And what are the names of those two corporations?

**Mr. Cooper:** At Bigstone the dominant corporation is Pan-American Petroleum Corporation, and at South Kaybob it is Hudson's Bay Oil and Gas Company Limited.

**Senator Isnor:** And which company have you a contract with?

**Mr. Cooper:** Both, sir. We have separate contracts with the two corporations.

**Senator Isnor:** That is what I wanted to find out. And, both of those contracts are for a period of 15 years?

**Mr. Cooper:** To be very precise, the one at Bigstone is for 15 years, and since the South Kaybob plant will be coming into operation later that contract is for a 14-year term ending at the same time as the 15-year contract.

**Senator Isnor:** The cost of construction per mile strikes me as being very high. Is that rough country up there?

**Mr. Cooper:** First, sir, there is a major bridge at the Athabasca which, of course, affects the average cost per mile. The country itself is not mountainous; it is rolling. I think we have a photograph which would give you some impression of it. The soil is not very stable so they cannot do too much cutting. They have to go around and out of the flats which comprise, in part, muskeg country.

**Senator Isnor:** Am I right in thinking that the cost per mile is higher than the average cost per mile of such construction?

**Senator Bourget:** It differs very much in different areas of the country. You can take the Trans-Canada Highway, for instance, where in British Columbia a mile cost nearly \$2 million, whereas in other parts of the country a mile of road can be built for \$150,000 or \$200,000. I do not think you can have an average cost. It is very difficult because these costs depend on the condition of the soil, and things like that.

**Senator Isnor:** That is what I am trying to get at—the conditions. Do you expect to get the investment back over the 15 years?

**Mr. Cooper:** Yes, sir.

**Senator Isnor:** But, there is no guarantee?

**Mr. Cooper:** The traffic which is guaranteed is sufficiently great that the revenue from it will amortize the capital investment.

**Senator McDonald (Moosomin):** Have you any information as to the supply in both locations? Do you know over what period of years the resource might last? You have a contract for 15 years. What I am trying to get at is...

**Mr. Cooper:** It depletes, sir. I think it will be pretty well depleted at the end of the 15-year period.

**Mr. M. Michaud, Mining Engineer, Department of Research and Development, Canadian National Railway:** There will be another five years of operation at South Kaybob, but always on a diminishing basis. The actual sulphur production is quite high in the first years, and then it diminishes each year thereafter, and it may go on beyond 1982 for another five years.

**Senator Bourget:** This bill gives the C.N.R. a power to apply to the Minister of Finance for a loan. In the circumstances will the C.N.R. have to apply for funds, or can the C.N.R. out of its own funds do this work?

**Mr. Cooper:** At this time I think I would have to say that our plans are based upon borrowing the money, but that must recognize, firstly, that we will not have time to spend money on it in 1968, and, secondly, our capital budget for 1969 is neither fully prepared nor approved. So, for 1969 we have two indefinite things. One is what our capital expenditure program will be, and the other is what will be our source of available funds. So, at the present time we must say that we are planning to borrow the money but the future will tell whether we need to or not. Over the past five or eight years we have not borrowed for capital projects, but whether our expenditure program will force us to come back for loans, or go to the public for loans, is uncertain.

**Senator Bourget:** What is the interest rate charged on such a loan?

**Mr. Cooper:** I believe that the interest rate—which, of course, is set from time to time at the time of any borrowing—depends on the yields then prevailing for Government borrowings for a like duration at that time, to which a fraction of a point is added.

**The Chairman:** Mr. Cooper, would you like to go into some detail with respect to the financing sections, namely, sections 4, 5, 6, and 7?

**Senator Pearson:** Could I ask a question first, Mr. Chairman? If these two groups get a guarantee on freight rates from the company—I remember a somewhat similar situation at Esterhazy in respect of which we sanctioned the building of a spur line. The Esterhazy people are now putting in trucks to haul potash into the United States because there was a complaint that the rates were going up.

**Mr. Cooper:** I do not think, senator, that that branch line at Esterhazy required legislation on the part of the C.N.R. However, the competitive position with respect to potash and sulphur is very different. The market now and the foreseeable market for sulphur is such that no problem is expected.

**Senator Pearson:** We thought the same about potash when it started.

**Mr. Cooper:** Well, I believe they then cut the price on potash. When the potash plants were built they undoubtedly based their economics on the then prevailing freight rates, and I do not believe the freight rates have changed significantly. But, they started price cutting.

**Senator Macdonald (Cape Breton):** Mr. Chairman, I have one question.

You mentioned, Mr. Cooper, that you have a guarantee to carry 75 per cent of their production. Is there any guarantee of a minimum production by the companies?

**Mr. Cooper:** Yes, there is, senator. There is a guaranteed tonnage, and any shortfall of shipments in relation to that tonnage guarantee requires the payment of damages.

**Senator Kinley:** Are they likely to have much competition in the market for sulphur?

**Mr. Cooper:** Do they have much problem in marketing it?

**Senator Kinley:** Yes.

**Mr. Cooper:** I believe not. I believe the sulphur market on a worldwide basis is extremely good, and that the international programs for assisting under developed countries are creating a need for sulphur.

**Senator Kinley:** Where is the market now that you expect to invade?

**Mr. Cooper:** Canada has a fair share of the international market. Can you give us the percentage, Mr. Michaud?

**Mr. Michaud:** Out of 2.3 million tons produced in 1967 some 385,000 tons were used in Canada itself. The remainder was divided about evenly in shipments offshore and to the United States. The worldwide demand for fertilizers makes it such that the rise in sulphur is some 8 per cent annually.

**Senator Kinley:** Is there an American market for this?

**Mr. Cooper:** There is an American market, about one-third. One-third may be said to be offshore and the remainder is currently Canadian. There is a greater market in outlying districts in conjunction with potash for fertilizers.

**Senator Aird:** A partial answer to the question is that the worldwide position is really controlled by two very large companies. That is the market with which they are competing.

**The Chairman:** Perhaps Mr. Cooper will supplement the answer, because I observe that he has some figures which I think are of great interest to the committee.

**Mr. Cooper:** In 1967 the sulphur production in Canada was 2,320,000 long tons, of which to offshore markets—which would be the Far East, Japan, China, India, Australia—947,000 long tons were sold. We entered the United States market with 827,000 long tons. The remainder, about 385,000 tons, was sold in Canada.

**The Chairman:** Because of the great development occurring there, I am sure you would like to hear from Mr. MacIsaac, the chief of the development branch of the railways. Perhaps he would make a brief statement to the committee.

**Mr. L. MacIsaac, Chief of Development, Canadian National Railways:** I cannot add too much to what Mr. Cooper has already said. This line is now being built to serve two companies, one of which is coming into production by the end of November and the other of which is in production now. This whole area is very rich in gas, and we believe that in the next few years other companies will come into production there which will make this railway line a very worthwhile investment. As Mr. Cooper said, the Hudson's Bay Oil and Gas Company are doubling the plant we are talking about, and there are indications that other companies will undertake further developments in the area. We therefore look to a substantial volume of traffic over this line in the next few years.

**Senator Kinley:** You start with the captive traffic of these two companies.

**Senator McDonald:** Will this be a unit train operation?

**Mr. MacIsaac:** It could be eventually as volume demands. The arrangements now are that sulphur traffic can move in 10 car lots, 20



car lots and 50 car lots, at rates scaled accordingly.

**Senator McDonald:** What happens to the product when it gets to Edmonton? Where does the producing company export from to the United States?

**Mr. McIsaac:** Through several border points.

**Senator McDonald:** And overseas?

**Mr. McIsaac:** Overseas through Vancouver.

**Mr. Cooper:** If I may supplement that, I think that perhaps at the moment it would be impracticable for unit train operation because some of the product may be shipped in solid form and some in molten form, which requires two destinations, and your train consist would be forever changing.

**Senator McDonald:** For the overseas market is this sulphur stored at Vancouver? Are

there storage facilities there? Where do they store the sulphur?

**Mr. McIsaac:** Dry sulphur is stored at the plant site.

**Senator McDonald:** Is this a seasonal market or is the market more or less over the 12 months of the year?

**Mr. MacIsaac:** I think it is over the 12 months of the year.

**The Chairman:** Does anyone desire Mr. Cooper to explain the sections in detail?

**Senator Smith (Queens-Shelburne):** These are standard sections.

**The Chairman:** They are in standard form. Are you prepared to report the bill?

**Hon. Senators:** Agreed.

The committee adjourned.

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First Session—Twenty-eighth Parliament  
1968

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 3

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*Complete Proceedings on Bill C-116,*

intituled:

An Act to amend the Post Office Act.

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WEDNESDAY, OCTOBER 30, 1968

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WITNESSES:

The Honourable Eric Kierans, Postmaster General. Mr. Paul Faguy,  
Deputy Postmaster General. Mr. Pageau, Director, Postal Rates and  
Classification Branch, Post Office Department.

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REPORTS OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C. DEC 2 1968  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,	Kinnear,
Aseltine,	Lang,
Beaubien ( <i>Provencher</i> ),	Lefrançois,
Bourget,	Leonard,
Burchill,	Macdonald ( <i>Cape Breton</i> ),
Connolly ( <i>Ottawa West</i> ),	McDonald,
Connolly ( <i>Halifax North</i> ),	McElman,
Croll,	McGrand,
Davey,	Méthot,
Desruisseaux,	Molson,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips ( <i>Prince</i> ),
Gélinas,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Sparrow,
Hollett,	Thorvaldson,
Isnor,	Welch,
Kickham,	Willis—(43).
Kinley,	

*Ex officio members:* Flynn and Martin.

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 30, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Cameron, for second reading of the Bill C-116, intituled: 'An Act to amend the Post Office Act'.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Dessureault, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

Wednesday, October 30th, 1968.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 8.00 p.m.

*Present:* The Honourable Senators Thorvaldson (*Chairman*), Aird, Aseltine, Burchill, Davey, Desruisseaux, Dessureault, Flynn, Fournier (*Madawaska-Restigouche*), Gouin, Haig, Hollett, Kickham, Kinley, Leonard, Martin, McDonald, Molson, Pearson, Quart, Rattenbury, Smith (*Queens-Shelburne*) and Sparrow—(23).

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-116, An Act to amend the Post Office Act, was considered.

The following witnesses were heard:

The Hon. Eric Kierans, Postmaster General.

Mr. Paul Faguy, Deputy Postmaster General.

Mr. Pageau, Director, Postal Rates and Classification Branch, Post Office Department.

On motion of the Honourable Senator Pearson it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

On motion of the Honourable Senator Burchill it was *Resolved* to report the Bill without amendment.

At 9.15 p.m. the Committee adjourned to the call of the Chairman.

*Attest.*

John A. Hinds,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

Wednesday, October 30th, 1968

The Standing Committee on Transport and Communications to which was referred the Bill C-116, intituled: "An Act to amend the Post Office Act", has in obedience to the order of reference of October 30th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,  
*Chairman.*

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Wednesday, October 30, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill C-116, to amend the Post Office Act, met this day at 8 p.m. to give consideration to the bill.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, we are meeting this evening to consider Bill C-116, to amend the Post Office Act. This bill has come to us, having been passed by the other place. It received second reading in the Senate this afternoon and is before this committee now. May we have the usual motion to print?

Upon motion, it was resolved that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

**The Chairman:** Honourable senators, we are very pleased to have with us this evening the Honourable Eric Kierans, Postmaster General. We also have Mr. Paul Faguy, Deputy Postmaster General, and Mr. F. Pageau, Director of Postal Rates and Classification Branch.

Mr. Kierans, we are very delighted to have you, sir. It might be a timesaver if we indicate to you the challenges this bill had on second reading in the Senate, before you make a statement to the committee.

The Honourable Mr. Desruisseaux spoke on this bill yesterday and made some critical observations. Senator Grattan O'Leary made some critical comments this afternoon. It might be appropriate if these gentlemen would indicate to you what the challenges generally were, so as to define the problem.

**L'honorable M. Desruisseaux:** Monsieur le président, monsieur le ministre des Postes, il m'est un peu embarrassant de vous faire venir pour étudier cette partie du projet de loi qui concerne, dans la province de Québec particulièrement, et au Canada, les petits journaux.

J'ai proposé devant le Sénat que, avant d'approuver le projet de loi de la majoration des tarifs postaux, le Sénat devrait étudier les effets qu'auront ces nouveaux tarifs sur les petits journaux.

La Chambre a été saisie, un peu soudainement, par ce projet de loi, et j'ai cru bon de faire un plaidoyer pour la survie d'un bon nombre de nos petits journaux.

J'ai été moi-même pendant 12 ans dans le journalisme ayant publié un journal de langue française et un journal de langue anglaise. Je ne veux pas, toutefois, entrer dans les détails de l'opération d'un journal, mais, je crois qu'il serait utile de considérer plusieurs points de vue, lesquels je pense ont déjà été émis et même peut-être discutés dans l'autre Chambre, mais auxquels je voudrais ajouter quelque chose.

Je voudrais citer le sort d'un journal qui m'est particulièrement cher, le journal de langue anglaise de la région de Sherbrooke. J'ai cité au Sénat que, dans le cas du *Sherbrooke Daily Record*, la situation qui lui serait faite deviendrait difficile et peut-être intenable. Ce journal a une circulation de 8,856 copies, et le nombre de copies qui circulent par la poste est de 6,357 copies; ceci peut varier quelque peu avec les chiffres du ministère, dépendant de la date exacte où on les a pris.

**L'honorable Eric William Kierans, Ministre des Postes:** Je n'ai pas trouvé de grande différence.

**Le sénateur Desruisseaux:** Mais, cela comprend 72 pour cent de la circulation. Je crois inutile de vous indiquer que les Cantons de l'Est sont tout de même

dans un rayon de 100 milles—75 milles à peu près. La plupart des exemplaires de ce journal de langue anglaise, dans ce territoire, sont livrés à des cultivateurs, dans les campagnes. Il y en a très peu qui sont dirigés à des gens qui ont les moyens de payer un prix plus considérable que celui qu'ils payent actuellement.

De plus, j'ai représenté que ceci amènerait des difficultés, et ce n'est pas sans connaissance de cause, parce que j'ai eu moi-même à faire de la sollicitation d'abonnements qui ont atteint le chiffre de 10,000 lorsque j'étais à *La Tribune*. Or, je me rends compte que la situation qui existe pour le *Record* de Sherbrooke peut exister également pour *L'Évangéline*, pour *L'Action* de Québec—cela peut varier, naturellement—mais, c'est une situation qui peut compromettre l'avenir des journaux dans la province de Québec. Ces journaux ruraux, je crois qu'ils sont nécessaires pour l'information régionale, et qu'ils sont essentiels au progrès de la région; à moins de penser à étendre la circulation de ces journaux, nous courons sûrement le risque de produire des effets que personne ici ne désire.

Je comprends la sollicitude, comme je comprends l'anxiété du ministère des Postes de vouloir combler un déficit tel qu'il a, mais je me rends compte qu'il y a, dans le rapport financier, pour la matière de seconde classe, pour l'année 1969-70, je constate, dis-je, que le montant des recettes a été de \$9 millions sur un total de 327 millions, ou à peu près—j'extraie ces chiffres du rapport. Or, je me rends compte aussi que, aux États-Unis, on a abordé d'une manière toute différente le problème des petits journaux.

**The Chairman:** Senator Desruisseaux, I wonder if you can frame your remarks in a question.

**Senator Desruisseaux:** I am coming to the point of the tariff that I mentioned along the lines of the tariffs that they have in the United States for small newspapers. In the first 150 miles they have a special tariff; beyond that they have another tariff. I would like to point out the differences.

**The Chairman:** Senator, I really would prefer it if you could frame your statement in a question to which the minister could reply to.

**Senator Desruisseaux:** I will be glad to. I would like to ask the following question: why would it not be possible to use the same system as they use in the United States, where the tariff is determined by radius and by zone? If we compare the two we can see that

there is a difference. In the United States they pay 1.3 cents per pound. In the next zone, 150 miles, they pay 4.6 cents on advertising content and 3 cents on news. The proposed rate in Canada is 5 cents on news and 15 cents on advertising.

My question is why cannot this great increase be made in such a way that we can meet at least the tariffs in the United States? Another point is that all these increases are going to be put into effect within 18 months, and, if they are, the small papers will find themselves in a predicament. They will not be able to change their own subscriptions to people.

**The Chairman:** Honourable Mr. Minister, I thought perhaps it would save time if the Honourable Grattan O'Leary were to ask his question of you now. It is possible that his question may overlap with that of Senator Desruisseaux to a certain extent. Consequently, you may be able to answer them both at the same time. Are you agreeable to that?

**Hon. Mr. Kierans:** Certainly. You are throwing me to the lions right at the start, though.

**The Chairman:** Senator O'Leary, would you mind asking your question?

**Senator O'Leary (Carleton):** I have just a brief question. Last week, sir, in the other place, as we call it, you said that there had been great pressure put upon you by public opinion and by newspaper publishers to try to see to it that these increases did not come all at once but by stages. You were impressed with this, you said, and you asked your colleague, Mr. McIlraith, to move certain amendments, which he did, and those amendments are here in this bill. But now, with the bill before me, I find that at the bottom of these amendments providing for stages of these developments, there is this:

(3) Notwithstanding subsection (2), (a) the minimum postage for a piece of mail consisting of one or more Canadian newspapers or Canadian periodicals described in paragraph (a), (b) or (c) of the subsection is two cents;

**Hon. Mr. Kierans:** That is right.

**Senator O'Leary (Carleton):** Will you tell me, sir, and the Senate committee, just what that means? I know what some of the publishers think it means. They think it means a doublecross. They were not advised of this when you said you wanted this change



so that it could be brought in by stages, and Mr. McIlraith moved accordingly. They accepted that. But now you have brought in this bill. What do you mean by "notwithstanding subsection (2)"?

**Hon. Mr. Kierans:** Well, senator, the post office wants to move to a position where at least it can obtain a minimum for carrying newspapers in the country. That minimum will now be two cents. It has been a third of a cent in the past and it has been even less than that in some cases. It has been a very low rate. We did not stage the two cents. That is what that means. But we did stage the increases in the news content and on the advertising rates. So that that was considerable—

**Senator O'Leary (Carleton):** That was a considerable increase.

**Hon. Mr. Kierans:** But it was also a considerable lengthening out. I remember the particular submission of the ethnic press from most newspapers across the country. They wanted this staged in terms of five years. My argument against that, senator, is quite simply that we recover such a low percentage of our costs. Let us say in such cases, if we recover 30 per cent of our costs and increase it by 50 per cent a year, well, that is an increase of 15 per cent net. But our costs have been going up at the rate of 25 per cent. You never catch up. I can assure you that they are not going to go up at a rate of 25 per cent next year. But under such circumstances they never catch up with the costs. The ethnic press in their particular submission pointed out that they thought a fair lengthening out might be a period of 18 months, because most newspapers have subscriptions of three years. If a newspaper wants to give away its paper by selling a seven-year subscription for \$5 plus an atlas, or something like that, I do not think we have to give them special consideration. Normal subscription might be three years. Now half of three years is 18 months, and if one person has one month to go in his subscription to *Le Devoir* and another person has 35 months to go in his subscription, that makes an 18 months' average.

**Senator O'Leary (Carleton):** When these amendments were moved by Mr. McIlraith, did you explain to the house at that time that the two cents would go to effect immediately?

**Hon. Mr. Kierans:** No, the problem was that nobody in the Opposition asked me that kind of question that you are asking me now.

**Senator O'Leary (Carleton):** That will show you how smart the Senate is.

**Hon. Mr. Kierans:** When I introduced the amendments nobody in the Opposition even asked me what the effect would be on the overall bill. They did not ask me about the financial effects. And you can hardly expect me, senator, to volunteer information like that.

**Senator O'Leary (Carleton):** Well, you have a good looking Irish face, and I cannot understand why you would not explain it at the time. People have been saying to me, and even as late as today, that while this is an important measure they did not have the time to deal with this fact.

**Hon. Mr. Kierans:** They had the time, but they didn't do it. I was entranced with the way they were making comparison between myself and C. D. Howe, and speaking of arrogance and the pipe line debate and prophesying that the party was going to disappear next year.

**Senator O'Leary (Carleton):** Do I take it then that you think concealment was a good thing?

**Hon. Mr. Kierans:** It wasn't concealed. When you present a bill and you go into committee you expect the members of the Opposition to give it a going over. Let us say that you have got closer to the heart of the matter here.

**The Chairman:** If you will excuse me a moment, Senator O'Leary, I notice that the Honourable the Leader of the Senate is present. Senator Martin, would you like to ask any questions of the Minister?

**Senator Martin:** No, Mr. Chairman, as a member of the Government I strongly support this bill.

**The Chairman:** Senator Flynn, have you any questions?

**Senator Flynn:** I am satisfied for the moment if we get the answers to the questions already posed.

**The Chairman:** Senator O'Leary, I am sorry I interrupted you. You have not finished your questions.

**Senator O'Leary (Carleton):** Senator Langlois did an excellent job in introducing this bill in the Senate—and I am not saying this because he is a fellow Gaspésian—but he made the statement that over the past 10 years the Post Office or the Government of Canada or the

taxpayers had paid \$300 million into the coffers of Canadian publishers. Now, I happen to be a publisher, or I was one, and I never saw any of that money. Do you really say paid \$300 million to the publishers?

**Hon. Mr. Kierans:** To the second-class publishing industry.

**Senator O'Leary (Carleton):** That is not what he said.

**Hon. Mr. Kierans:** Well, I want to correct a statement which I made in response to some questions. I said the publishing industry, meaning by that everybody in the second class; I didn't mean newspaper publishers.

**Senator O'Leary (Carleton):** That is something else. This appeared in *Hansard*. It was said that \$300 million was paid to these large newspaper barons, of which I don't happen to be one. Surely this is nonsense.

**Hon. Mr. Kierans:** This is second class. The amounts paid by the people of Canada to second-class publishers alone, and this includes publishers of all kinds of newspapers and magazines, resulted in a deficit amounting to \$300 million over 10 years.

**Senator O'Leary (Carleton):** Would you not say then that the \$300 million did not go to the publishers, but in the case of newspapers it went to subscribers?

**Hon. Mr. Kierans:** We could have an argument on that all right. Let me say quite frankly that I am not speaking of large city newspapers and I am not speaking of your newspaper, but, as you are aware, the economics of the publishing industry is such that the weekly newspapers and a great many rural papers have not really been looking for a return from subscriptions?

**Senator O'Leary (Carleton):** They look for a loss.

**Hon. Mr. Kierans:** In many cases they give it away. I can give many examples of papers, some owned by Liberals, that are most critical of this bill. A very large newspaper, for example, may send out people looking for subscriptions. They may have to hire professional people for this purpose, and they tell them, "You can sell our newspaper for \$5 a year for seven years and on that \$5 we expect nothing. You yourselves will get 10 per cent of that \$5 and the other 90 per cent will go to the people who call at the various doors." Now, I don't think this is quite right.

I also have in mind the problems of handling one particular newspaper in western Canada which sells almost 23 million copies a year in all kinds of weather conditions—hail, rain, sleet and snow. This costs money, and when you consider that it can cost as much as \$112,000 you realize you are subsidizing somebody, even if the publishers pass it on.

**Senator O'Leary (Carleton):** But you were giving the impression to the public that this money went into the hands of the publishers, and you are now taxing the poor rural subscriber.

**Hon. Mr. Kierans:** We could have presented a bill to the public for \$1,600,000. Instead we presented a bill for \$100,000 and we absorb a deficit of \$1½ million.

**Senator O'Leary (Carleton):** Well, we got none of that money, I assure you, and we lost money on every mail order we got.

**The Chairman:** Senator Langlois introduced the bill in the Senate and reference was made to a statement of his by Senator O'Leary (Carleton). I wonder if he would like to reply.

**Senator Langlois:** I want to set the record straight. What I said yesterday, and it is reported at page 371 of *Senate Debates*, is this:

Over the past ten years alone the Canadian public has disbursed a total of approximately \$300 million to publishers by way of a subsidy on second-class mail rates, . . .

And this includes all publications.

**Hon. Mr. Kierans:** That's right. The senator did not make the same mistake I made. But I happen to have said, and Senator O'Leary is right on this, one time when I was interviewed by reporters "to newspaper publishers," which would be wrong.

**Senator O'Leary (Carleton):** I am sure the minister knows very well that the newspapers lose money on these mail subscriptions. We subsidize the rural subscriber because we think he is entitled to information. We think he is entitled to the news of the world, and we sell our papers at \$17 a year to such subscriber while the same paper sells in cities at \$24 a year. If these new rates go into effect, sooner or later we will have to ask these people for at least \$30 a year, and that is prohibitive. How can you justify denying these people the opportunity to receive a newspaper,

principle which has been accepted since Confederation?

**Hon. Mr. Kierans:** I don't think we are going to deny them.

**Senator O'Leary (Carleton):** Well, they cannot afford it.

**Hon. Mr. Kierans:** Instead of raising it \$10 a year, it can be raised \$5; they will want to keep that subscription because of the advertising revenue.

**Senator O'Leary (Carleton):** We don't want to keep it. That is wrong.

**Hon. Mr. Kierans:** This is one of the bedrock principles on which we have worked. I am in favour if this is the way the people decide they should subsidize or give grants to cover transportation costs to the newspapers, particularly the five or six that Senator Desruisseaux has mentioned, but I don't think this subsidy should be hidden or mingled with postal rates. We are trying to run a service. We want to be paid for the service and the people who run the Post Office want to be paid. During the last year people have come to realize how important the postal service is. The employees feel they are no longer going to subsidize the Post Office by the low wages and salaries they have been getting. There is a question of pride and morale involved in the Post Office service and it is desirable to improve these. People are beginning to realize that the Post Office is a \$400 million business. Supposing we were to balance the budget, I would be perfectly agreeable to support a movement in the House by the Secretary of State, Mr. Pelletier. It may be in the form of grants to the Council of Arts or to the CBC and in turn we could have an application of certain newspapers whose services are very costly, in areas such as rural areas; but then the people would know what these subsidies are, how much they are, and to whom they are going. Now, nobody knows.

**Senator O'Leary (Carleton):** You are a master of parliamentary debate and you are doing very well. Nevertheless the impression has been given abroad that this loss to the post office is due to newspapers. I asked the question of Mr. Langlois last evening: by what criteria do you arrive at your conclusion that you are losing so much by the carriage of newspapers? In fact, you have given us a table of figures. How do I know those figures are all right?

**Senator Langlois:** I answered that today.

**Senator O'Leary (Carleton):** But it was not the answer I expected of you, sir.

**The Chairman:** Order! Senator Prowse has a question.

**Senator Prowse:** I have two questions. The first is somewhat the same as Senator O'Leary's. I am very intrigued by the fact that you have the costs of operating the Post Office broken down into different categories of mail. How did you do it?

**Hon. Mr. Kierans:** This is quite easy. We handle almost five billion pieces of mail. I have given you figures, but this is a four-year study, following the Glassco Commission, which said that each class of mail should pay the cost of the service rendered. This was done by some of my officers here in the Post Office and it was also done by Touché, Ross & Sons outside the Post Office. They took the cost of transportation, overhead, rural route delivery, and these were affixed to each piece of mail.

I may tell Senator Prowse it was done very fairly from the point of view of the second-class mail. Aside from the actual freight of transporting large magazines and so on, they share all letter costs of the department on an item basis. In other words, a first-class letter bears the same overhead and the same delivery and certain other costs as the *Toronto Star* or the *Ottawa Journal*. If someone wanted to be really nasty he could say: "This newspaper is nearly a pound in weight whereas this first-class letter is only a fraction of an ounce therefore, more should be paid on the newspaper." But we did not do that. These costs are fair. I give you my firm belief in the fairness of them.

**Senator Prowse:** I am not suggesting that it was unfair or improper, but I was rather interested in how the costs were broken down. City newspapers are delivered directly by truck or by newspaper boys, but what about the service in a smaller community? I appreciate that you can calculate the number of hours officials are working, and I can see how you can base a country rate between point "A" and point "B", but how do you calculate in your costs the postmaster's time who must be there the full twelve hours?

**Hon. Mr. Kierans:** This is part of the general overhead administrative cost. The number of pieces of mail that go through that post office bear their proportion of the general office administration.

**Senator Prowse:** In other words, in effect it is a bookkeeper's arbitrary assessment of costs?



Hon. Mr. Kierans: You know that the cost is there because you are paying "X" number of dollars. Therefore, you apportion that "X" number of dollars to the number of pieces of mail that you handle.

Senator Prowse: Let me put it to you in another way. Supposing that all newspapers or a certain class of mail ceased to be shipped, would you reduce your postal costs by the amount shown as the cost of handling second class mail?

Hon. Mr. Kierans: There are two ways of replying to that, senator. One of the honourable members in the Opposition said that what was wrong with the Post Office is that it should get out and sell. I can tell you that when you are getting less than a cent for an item that costs 7 cents to handle, you had better not get out and sell too much, because you are going to lose more and more.

As to the second part of the question, that is probing deeper. You are suggesting that we would lose \$112,000, and this is a net loss in cash. This is applying the principle that first-class mail, because we have a monopoly on this and have to deliver it to every home in Canada, should therefore bear all the burden of the overhead costs, indirect costs, and that all other sorts of mail are marginal to it because we are calling at your home anyway and therefore we may as well deliver the Winnipeg *Free Press* or the Calgary *Albertan* while we deliver the Bell Telephone bill.

We do not accept this principle, neither did Glassco or anyone else. All classes of mail are part of the function of the Post Office, to deliver that mail, and should bear a proportion of the cost. We have marginal operations. There are some things that are not essential to the Post Office, such as the Post Office Savings Bank, which you could justify if you could bring in more money from the operation than you paid out on it. The same applies to the postal money orders, which is a marginal service. But the mail you cannot justify.

It could be done in a different way. I could have done nothing about second-class mail and have put the first-class mail up to 7 cents, and we would have had approximately the same profit picture. Or we could have changed the third-class mail, but we left it alone. We said we are going to recover on second-class mail, because this has been the basis on which Canada was founded—communications, the railways, from coast to coast, the iron link, and so on. They were the two links. The newspapers were the printed word but nowadays it is not the only means of communication. The news of this committee meeting tonight in Ottawa could appear on television or radio at 11 p.m. tonight

and not be in the newspapers tomorrow morning and still 90 per cent of the people of Canada would know the result of this meeting.

Senator Prowse: We received a financial statement showing these postal adjustments. On page 12 in the second-last column it gives particulars of second-class mail for 1967-68, and shows daily newspapers at \$1,632,333.

Then there is *Reader's Digest* and *Time Magazine*, the total deficit for the two will be \$1,522,097. In other words, the Post Office is going to subsidize *Reader's Digest* and *Time* by reducing the carrying part of their costs to approximately the same figure within \$100,000 of what they are going to give for subsidy of the daily newspapers in Canada.

Hon. Mr. Kierans: We deliberately put the figures of *Reader's Digest* and *Time Magazine* in there, knowing the interest that members of the house and of the Senate have in that. *Time Magazine* and *Reader's Digest* are paying exactly the proportion of the cost that we are attempting to recover from the magazine industry as a whole. *Time* and *Reader's Digest* are not being singled out in any way, and this is in line with the O'Leary Commission. They are being singled out because of the definition of Canadian publication that are in there. They are not being discriminated against within their class.

Actually, it turns out that the 31.7 and 34.3 which the two magazines are paying comes exactly to 33 per cent, which the magazine part is paying. I cannot tell you right now whether *McLean's* is above or below that 33 per cent, but all of these rates, as they affect particular magazine, depend on its format, size, publication, weight and such things. So some cost a little less and some a little more. They are not considered in the same class as daily newspapers. The problems of the magazine industry are considerably different. The kind of competition they have is not the kind of competition the daily newspaper faces. You cannot say that in Ottawa the *Ottawa Journal* and the *Ottawa Citizen* have a monopoly. Between the two, they share a common market but that market is not being hit by the flood of American magazines, and though there may be fierce competition between the two it is of a different order. So the newspapers are not subsidizing *Reader's Digest* and *Time Magazine*. But the Canadian people are subsidizing the magazine industry to the extent of 67 per cent, and they are going to be subsidizing the newspaper industry to the extent of a little over 27 per cent, and of course the weekly newspapers to the extent of something around 87 per cent. But these are different costs and you cannot compare



the competition of the daily newspaper with that of *Time* or *Reader's Digest*.

**Senator Prowse:** Where do you calculate the newspapers would get the necessary additional income from to meet additional costs of business?

**Hon. Mr. Kierans:** With the exception of the six or seven cases Senator Desruisseaux mentioned—there are about six, three French-speaking newspapers in particular, the Sherbrooke *Daily Record* and two or three other English-speaking newspapers which will be a hard hit—the majority, although there are exceptions, can cover it by reason of subscription rates, although not completely. Let us take the Winnipeg *Free Press*. If it has a total circulation of about 115,000, of which 3,000 go to rural readers, it can spread; instead of raising the Winnipeg *Free Press* subscription rate by \$20 or \$25, it may be raised \$5 or \$8 and part of it is subsidized by the rest, if it considers it worth while to keep the 3,000 people. Looking at the rural areas, we went very far in maintaining the subsidy to weekly newspapers, as you can see, and also in giving back the rural routes to them.

**Senator Argue:** I have two or three questions centered around the effect of this legislation on rural weekly farm publications in Western Canada, such as the *Free Press Weekly* and *Western Producer*, but I should be quite happy to confine my questions to the *Western Producer*, which is farmer-owned and farmer-distributed. I would think the vast majority go into mail boxes in hamlets and villages where farmers come in and pick them up; there is no rural door to door delivery to any extent. I would like to know what this means to those papers.

**Hon. Mr. Kierans:** I have the figures here for the *Western Producer* which I can give. Shall I start off with, for example, *Farm and Country*?

**Senator Argue:** I just know about the *Western Producer* and the *Free Press Weekly* which go into the majority of farm homes.

**Hon. Mr. Kierans:** I will give two examples. Take *Farm and Country*; they came to see me, or they sent their lawyers to see me. It has a circulation of 18,500, of which 117,159 are mailed. Our cost of carrying that 19 times a year throughout the West was \$150,000. This is not unreasonable for something like 1½ million copies. Do you know what we got from that \$150,000? We got \$3,489. The increase as it will affect them—they are not affected by the amendment, or very slightly—will be to \$44,984, which

means they go from \$3,500 to \$45,000, which is a tremendous increase. I agree that it is still less than one-third of our cost.

This is how that paper operates. It has a nominal subscription price of \$1.50, but the lawyers admitted to me themselves that 98 per cent to 99 per cent is sold at 25 cents a year, not \$1.50. The net effect of the increase in postal rates, great as they were—what we are changing here is the economics of weekly newspapers—is for them to change that 25 cent a year subscription to 60 cents. Are 19 issues of *Farm and Country* worth 60 cents or not? The *Western Producer* is the same thing. It costs us \$162,000 out of \$168,000 that we carried. Their nominal subscription rate was \$1.50. I am not quite sure of my figures here, how much of that was free. A lot of them sell to co-operatives at bulk rates.

**Senator Argue:** I do not think they do in farming areas.

**Hon. Mr. Kierans:** Let us leave that one on aside. Take \$1.50; they have to go up 73 cents a year, that is all.

**Senator Argue:** I just want to be clear about the 1 1/2 cents per issue. That is the total after the full three year period, etc. Is the total effect of this legislation to add 1 1/2 cents per issue for the *Western Producer*?

**Hon. Mr. Kierans:** Exactly. All I want to say is this. If you have been paying \$1.50, is it worth \$2.25 a year? Has a paper any right to say what they are selling is not worth \$2.25 a year? These things can get translated into fantastic percentages. For example, \$3,000 going up to \$44,000 is 1,000 per cent. We had no business doing it at \$3,000 in the first place. If we take that \$3,000 and increase that by only 50 per cent it should be \$1,500 more, and my cost would have gone up at best 10 per cent of \$150,000, which is \$15,000. Every minute we sit here talking, living and breathing we know we are getting worse in the hole. This has been the basic problem.

**Senator Argue:** This is not as bad from my point of view as I thought it might be. I would think the farmers can go to 73 cents per year if they need to. I think the Saskatchewan Wheat Pool that owns the *Western Producer* can go to 73 cents if it had to. Did you receive, Mr. Minister, any representations opposed to this legislation from the *Western Producer*, the Canadian Federation of Agriculture or the Saskatchewan Wheat Pool?

**Hon. Mr. Kierans:** The *Western Producer*, no; I do not think they sent anybody in. No, they did not.

**Senator Argue:** Did the Canadian Federation? It is the kind of thing that would suggest itself to me. Did they come and make some representations, in writing, verbally or otherwise, saying this would have an adverse effect on farm publications in this country?

**Hon. Mr. Kierans:** The strongest representations in that regard—even the *Farm and Country* when they came in were quite willing to discuss it—came from the *Free Press Weekly*.

**Senator Argue:** I ask this because there is quite a stinging editorial against what you have done in the *Western Producer*, I believe of September 19, making a great complaint. This does not impress itself on me nearly as much if the complaint of the newspaper was not directly forwarded to you, or made by somebody coming here, or at least getting on the telephone.

The next thing I would like to know is whether Charles Gibbings, President of the Saskatchewan Wheat Pool, or anybody else on their behalf, made any representations opposing what has been done? I think this is exceedingly important. If the owners of the newspaper and the editors have not made formal representations, I think we are just whistling.

**Hon. Mr. Kierans:** I know Charlie Gibbings, but I never heard from him at all.

**Senator Argue:** Nor anyone else from the Saskatchewan Wheat Pool that you can recollect?

**Hon. Mr. Kierans:** Not that I can recollect, no.

**Senator O'Leary (Carleton):** The *Free Press Weekly* has been mentioned. In the other house, and I think in our house, it has been suggested that all these are very wealthy people. I happen to know that the *Winnipeg Free Press Weekly* last year made no money. I am sure many of you are also aware that the *Family Herald and Weekly Star*, an old and very respected paper, went out of business. What will happen to other papers like that? What will happen to the small rural weeklies? What will happen to the religious press? I am concerned with the religious press. What will happen to that? They depend entirely on mail deliveries.

You have made a case for your increase. You have said that percentages do not mean anything because you start from a low figure, and I think that is true.

You say it is good business to run the Post Office at a profit, or nearly a profit, and wipe out the deficit. Would you say that running the Post Office at a profit was more important to the national life than the newspapers which may be destroyed by this legislation?

**Hon. Mr. Kierans:** To answer the first part of your question I am going to quote:

In the main, farm papers are faced with more fundamental problems than those of foreign competition in its various forms. Their very raison d'être are threatened by the decline in rural population and the urbanization of those who remain—due largely to the impact of TV, radio and other media. The tastes, habits and desires of the rural family are coming more and more into line with those of the urban family and the communication media are becoming common to both. Furthermore, with the increasing ease of travel, there is a growing shift in the shopping habits of the rural family. They are gravitating more and more toward the city, even for their weekly food requirements.

Now, that was Senator O'Leary (Carleton) in the O'Leary Report. What I want to say to you, senator, is that I agree with you thoroughly that the problems of the rural press are much more fundamental than the subsidies of the post office. I agree that something has got to be done here, but they are television; they are changing habits; they are radio; they are changing interests; they are the growing urbanization of the country.

Although I am sorry that the *Family Herald* went out, one thing I am very glad about is that it went out two or three months before this bill came in, because there isn't a newspaper that will go out from now on that I will not be blamed for. The fact is, however, that they have been going out at the rate of 50 a year.

**Senator O'Leary (Carleton):** Surely, a gentleman of your intelligence is not going to compare what is called electronic journalism with real journalism? You might as well speak of electronic poetry. There is no such thing as electronic journalism; and yet your Government is paying \$140 million a year in subsidies. What have you to say about that? May I ask one more question, and I will be finished with you? You spoke a moment ago about *Time* magazine. I am not blaming you too much, because you inherited this problem, but did you in this legislation regard *Time* magazine a Canadian magazine?



**Hon. Mr. Kierans:** It is not so defined, but let me say what I did not regard it as. I do not feel that discrimination against *Time* magazine or *Reader's Digest* is going to solve the problems of the magazine industry.

**Senator O'Leary (Carleton):** I am not so sure I agree with you. I brought in a Royal Commission report, as you know. I don't know where it is now, but somebody once said that if Moses had been a Royal Commissioner the Israelites would still be in Egypt. So I am very philosophical about it. I imagine that is what happened to my report.

When you say that *Time* is a Canadian magazine, you are contradicting Mr. Henry Luce, who, under oath in this very building, said that *Time* magazine was not a Canadian magazine. I hope you talked to your colleagues about that, sir.

**Hon. Mr. Kierans:** It is so defined now. It has come out of that classification. To answer your question about the CBC, the argument can go both ways. I am not convinced of it either way, but it is not an argument for me to maintain losses in the post office because the CBC has losses.

**Senator O'Leary (Carleton):** I read your article the other night. I thought it was very logical and good, but does not answer my question.

**Hon. Mr. Kierans:** But the point is that I am quite willing that somebody should provide the same kind of assistance, financially, to the publishing industry, if both houses deem it wise and good and in the interest of the Canadian people. I do not accept that this kind of assistance should be intermingled with postal rates. Let us make in both houses, the Senate and the House of Commons, a common decision to create a council that will provide subsidies to help certain parts of the publishing industry.

I think most people would generally accept that, because they know where it is going and both houses vote upon it every year.

**Senator Desruisseaux:** In spite of party lines, Mr. Minister?

**Hon. Mr. Kierans:** Well, if somebody wants to propose it, I am not arguing against it.

**Senator O'Leary (Carleton):** I would be the first to fight subsidy for the press. I do not believe in it. But what I object to is the claim made in all these statements that in some way you pay \$300 million and you

say, "all publishers"; but I think in fairness you should have made a distinction. That is why I asked the question last night, "Have you made a distinction between newspaper carriage and the carriage of other second-class mail?" And I do not think you have.

**Hon. Mr. Kierans:** All right, senator. I think you will appreciate this, and it never came out before, but one of the fundamental problems in that whole second-class situation is that you can call a lot of people publishers who are not publishers. They are simply called publishers because they are in that classification.

**Senator O'Leary (Carleton):** You mean that category?

**Hon. Mr. Kierans:** Yes, for example, CIL, the Royal Bank Monthly Letter and so on. Now, under the new definition, if you notice, over 2,500 of the 5,000 publishers who are presently in there—and this to me is a fundamental change much more so than the financial changes—more than 2,500 of them are being ripped out. They are going into third class where they belong. This is going to change the whole nature of that deficit and we will apportion it very much more clearly between the weeklies and the dailies, and the dailies will not come out badly in this, although the magazines will still come out badly.

**Senator Sparrow:** Mr. Minister, in discussion in both houses reference has been made to dailies and to weeklies. There appears to me to be a serious problem for bi-weeklies and tri-weeklies in population centres of over 10,000 people. In actual practice they are weekly newspapers in that category. This is the first question: would you explain to us what the effect is on them and if it is as bad as it sounds? And do you feel, from all the representations made to you and the studies that you have made yourself, that in fact you can assure us that no daily, weekly, bi-weekly or tri-weekly newspapers will in fact go bankrupt because of these increases.

**Hon. Mr. Kierans:** Well, the latter part of your question is hard to answer, senator, because there are papers going bankrupt every day for a whole host of reasons. They can go bankrupt for mismanagement or any number of reasons. There are marginal newspapers today which, without the effect of the postal increases, would go under anyway within the next year. Now, will this accelerate it? I think I would have to admit that this will put more pressure on them, but what I am thinking of is, and this is a global answer,

really, that I, as the Postmaster General, am faced with a certain problem and a certain challenge, namely \$99.5 million this year, which is going to be \$130 million next year. I am pushing this challenge off. It is distributed among 5,000 people. There are more than that, because it is in the third class, too. I am dividing up that challenge and saying, "Look, you are going to have to face your own particular challenge in adjusting to these new increases. If it is \$41,000 for the *Farm and Country*, well, that is a challenge for you to adjust to, but my challenge is \$99.5 million. So it is going to demand a good many of these newspapers to do their homework better and pay more attention to the operations of their businesses and so on.

I would like to say that there are various people whom I admire in the newspapers. I admire them all, in fact. I will tell you one thing, though: there are very many ways of getting newspapers across the country. Senator Desruisseaux has mentioned newspapers that have, by tradition, built up a large proportion of their subscription by mail. There are about six or eight of them. He has named at least five of the six or eight, and these are the ones that are going to have to adjust. On the other hand, you will find another newspaper, for example, *Dimanche-matin*. Pour moi, le directeur de *Dimanche-Matin*, c'est un génie!—une distribution de plus de 300,000 par semaine à travers la province de Québec, sans un seul timbre-poste. C'est un surhomme.

**Sénateur Desruisseaux:** A weekly on Sunday is easier.

**Hon. Mr. Kierans:** Nevertheless, senator, he closes down that weekly at 11 o'clock on Saturday night after the hockey games, but still the paper goes right across the province, because I have been in Seven Islands, Chicoutimi and all over the province on Sunday morning when the *Dimanche-Matin* was there, and there was not a single letter carrier or a postage stamp involved. These are problems or challenges that the people in the publishing industry are going to have to face up to.

Now, Senator Sparrow, what was the second part of your question?

**Senator Sparrow:** It had to do with bi-weeklies and tri-weeklies.

**Hon. Mr. Kierans:** Oh, yes. The definition is that if it is more than a weekly it becomes a daily. We have had too many classifications. We had 10 classifications but

we have now got it divided down to three classifications for administrative purposes. If we said "bi-weekly," then we would find that it would move to tri-weekly, and then where would it end? So anything more than a weekly is a bi-weekly. But you cannot say that these papers are losing their zoning privileges. They never had them.

Generally, there are very few complaints from the weekly newspapers. Some of the bi-weeklies and tri-weeklies will be hit roughly the same way as the daily newspaper.

**Senator O'Leary (Carleton):** Mr. Chairman, it is to be hoped that we can keep this discussion at least at the grade four level. The indication was that if you do not drive the papers into bankruptcy, the legislation might be all right. What kind of nonsense is it to introduce that in a committee like this?

**Hon. Mr. Kierans:** I did not introduce it.

**Senator O'Leary (Carleton):** No, and I think your answer was all right.

**Senator Davey:** I hate to involve myself in what is essentially an Irish civil war. Maybe we should just sit back and enjoy it. I do not agree with everything that the senator has said this evening, but I must say I am inclined to share his views on *Time* magazine and *Reader's Digest*. I would like to return the discussion to that aspect for a moment or two. *Time* magazine and *Reader's Digest*, for the purposes of this legislation, are being treated exactly the same as if they were both Canadian magazines.

**Hon. Mr. Kierans:** They are out of the Canadian classification by definition. They do not come under it. They are being treated as magazines.

**Senator Davey:** If I understood you correctly, think you said earlier that you would be against discriminating against those magazines. I do not want to put words in your mouth. I am just putting the question. Was this considered at all?

**Hon. Mr. Kierans:** Oh, yes I think that several things have happened in the last two or three years. I think on a straight examination of the facts you might be able to prove that *Reader's Digest* has been doing a very good job in Canada employing people, publishing here, printing here, developing their record business which is now considerable with exports to many countries in the world. They even sold part of their shares to the public. But to discriminate against them



don't think I have the same feeling about discrimination against tariff rates that I have about tariffs in particular. Protecting the Canadian businessman does not necessarily make him a better businessman. He has less challenges to meet. He may be more comfortable and he may be able to play more golf. But whether it is better for him . . .

**Senator Davey:** Well, so far as the publishing industry is concerned—and I think I could call it an industry—it is surely unique so far as advertising revenue is concerned, and it seems to me at least that this form of discrimination should simply not be there. Quite recently I have reread and restudied Senator O'Leary's (Carleton) report and I must say I think it is an excellent one and I cannot help wondering if in this legislation you could not really have gone further with those particular magazines. You say you did consider this at some stage in formulating your plans, and I certainly am not here to quarrel with the final decision, but I don't feel you have answered my question.

**Hon. Mr. Kierans:** I think I could answer a little more fully in saying this: I think the problems of the magazine industry are not so much the problems of themselves vis-a-vis *Reader's Digest* and *Time Magazine* but rather a problem of getting a percentage of the advertising dollar vis-a-vis television, radio and the newspapers. It is my understanding that while their situation has not improved that much, they are doing much better as magazines. In other words, I think they had less than two cents of the advertising dollar.

**Senator O'Leary (Carleton):** I remember when *Reader's Digest* had 40 cents of all magazines, and now it is 60 cents.

**Hon. Mr. Kierans:** These rates are going to help the magazine industry as an industry because of what we have done in third class, which doesn't fall under this bill. We have brought the third class mail to a break-even point. There is a loss there of \$1½ million but there will not be that loss because of savings we are going to introduce next year. What has happened—you as an advertising man will realize this—is that as you put the direct mail third class with an increase in postage rates, it is a much better percentage point than the increase in the postage rate on *McLean's* or some magazine like that. Therefore, a great many people who are advertising will begin to revise their opinion that newspapers and magazines are better off because they are so greatly subsidized and that this was a good way to reach the public, and they will think that perhaps it is not so good now because the impact on

that class is really greater in its overall effect, although the percentages are not as great as on daily newspapers. The industry itself, I think, will do better.

**Senator Davey:** I am basically in sympathy with the resolution on this whole question of cost and, with all respect to Senator Desruisseaux and Senator O'Leary, it seems to me they skirt the whole question of advertising revenue. Senator Desruisseaux was speaking about the whole question in so far as newspapers would pass on the cost the public and presumably none to the advertisers. That would be the case with some of the figures, but it may be that the cost will be passed on to the advertising.

**Hon. Mr. Kierans:** That is right.

**Senator Davey:** At the same time, I think the position of the two magazines in question is dominating and is destroying the magazine industry in Canada from that special position.

**Senator Langlois:** I wish to ask the following question of the Minister for the purposes of the record—I know the answer because I have been studying the legislation. Mention has been made as to what will happen to religious publications following the new definition for newspapers in the bill. I would like the Minister to tell us what will happen from now on to political publications such as "Liberal Action"?

**Hon. Mr. Kierans:** Such publications are in the third class. All kinds of things, such as the Royal Bank circular, and religious papers will be in there. The *United Church Observer* is still there; it is a newspaper, an item of general interest; but the United Church Parish bulletin is out of there. It is the same with the *Catholic Register*. It is in there, but the St. Thomas Aquinas bulletin is not.

**Senator Davey:** "Liberal action" is third class.

**Hon. Mr. Kierans:** It is going to pay third-class rates—and nobody asked that question on the other side of the house.

**Senator Pearson:** Mr. Minister, can you tell us if you have any record of the difference in cost between the new transportation systems, by aeroplane and truck, as compared with the old railway service? Do they become a little more expensive?

**MR. PAGEAU, DIRECTOR, POSTAL RATES AND CLASSIFICATION BRANCH, POST OFFICE DEPARTMENT:** We have saved money since the railway services have been curtailed. The old way was

very costly because the trains left at times which were not suitable and on each occasion there had to be a mail car. We have saved considerably now. In regard to air mail transportation, as the first-class mail volume has increased the rates to Air Canada have been cut down considerably. It has gone down from \$1.50 per ton mile to 50 cents.

**The Chairman:** I am in your hands as to where we go from here in regard to this bill. We have had a good discussion with searching questions and thorough answers. The bill is a comparatively lengthy one of sixteen pages. If there are more questions, of course we will continue with them.

**An Hon. Senator:** I move that we report the bill.

**The Chairman:** That is what I was going to ask. Do you want to go through the bill clause by clause?

**Hon. Senators:** No.

**Senator Kinley:** I listened to the discussion in the house this afternoon. We all regard Senator O'Leary (Carleton) as a splendid advocate, a man who knows the newspaper business, in which he has grown up. I was a little disappointed when he said that newspapers—the *Globe and Mail*, the *Ottawa Journal* and the *Ottawa Citizen*—and other publications were in debt. I thought he should have mentioned something about advertising. I was in the newspaper business for some years, with a small newspaper. We never made any money on subscriptions, we sent out and got

them, but we had to pay more for them than we got in in subscription revenue. However, we made money on the advertising. Nowadays everyone is advertising—the banks, the trust companies, the liquor people, even the Government is advertising. Would many people in the newspaper business come here and say they are in financial trouble?

**Senator Langlois:** Even the Post Office advertises.

**Senator Kinley:** Yes, everybody advertises. The newspaper is only a vehicle. They carry the advertising which gives them the money. My experience in the newspaper business was not extensive. I had a political newspaper. I had to pay much of the expense of running elections, and I had so much to do that I sold it to a young fellow who is now doing splendidly with it. I know what he paid for it and I know what he wants for it now, so there must be some money in it somewhere, because his asking price for that business is very high.

**The Chairman:** Honourable senators, it has been moved by Senator Burchill that we report the bill without amendment. Is it agreed?

**Hon. Senators:** Agreed.

**Hon. Mr. Kierans:** Thank you very much, honourable senators. I have enjoyed my session with you. It has been my baptism of fire here.

The committee adjourned.









First Session—Twenty-eighth Parliament

1968

**THE SENATE OF CANADA**  
**PROCEEDINGS**  
**OF THE**  
**STANDING COMMITTEE ON**  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 4

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*Complete Proceedings on Bill C-124,*  
intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada.

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THURSDAY, NOVEMBER 28, 1968

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WITNESSES:

Mr. R. T. Vaughan, Vice-President of C.N.R. and Secretary of Air Canada.  
Mr. J. M. Duncan, Assistant General Counsel, C.N.R. Mr. H. Duncan  
Laing, Assistant Vice-President of Finance, Air Canada. Mr. D. F.  
Atkinson, Chief of Budgets and Cost Controls, Air Canada. Mr. W. G.  
Cleevely, Co-ordinator of Capital Budgets, C.N.R.

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REPORT OF THE COMMITTEE

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,	Gouin,	McGrand,
Aseltine,	Haig,	Méthot,
Beaubien ( <i>Provencher</i> ),	Hayden,	Molson,
Bourget,	Hays,	Paterson,
Burchill,	Hollett,	Pearson,
Connolly ( <i>Ottawa West</i> ),	Isnor,	Phillips ( <i>Prince</i> ),
Connolly ( <i>Halifax North</i> ),	Kickham,	Quart,
Croll,	Kinley,	Rattenbury,
Davey,	Kinnear,	Roebuck,
Desruisseaux,	Lang,	Smith ( <i>Queens-</i>
Dessureault,	Lefrançois,	<i>Shelburne</i> ),
Farris,	Leonard,	Sparrow,
Fournier ( <i>Madawaska-</i>	Macdonald ( <i>Cape Breton</i> ),	Thorvaldson,
<i>Restigouche</i> ),	McDonald,	Welch,
Gélinas,	McElman,	Willis—(43).

*Ex officio members:* Flynn and Martin.

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Senate, Wednesday, November 20, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill C-124, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Chairman.*





## MINUTES OF PROCEEDINGS

THURSDAY, November 28, 1968.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 9.30 a.m.

*Present:* The Honourable Senators Thorvaldson (*Chairman*), Burchill, Desruisseaux, Flynn, Fournier (*Madawaska-Restigouche*), Gouin, Haig, Hays, Hollett, Kinley, Lefrançois, Leonard, Macdonald (*Cape Breton*), McDonald, McElman, McGrand, Méthot, Molson, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Sparrow and Welch. (23)

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-124, "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", was read and considered clause by clause.

On motion duly put, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

Mr. R. T. Vaughan, Vice-President of C.N.R. and Secretary of Air Canada.

Mr. J. M. Duncan, Assistant General Counsel, C.N.R.

Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada.

Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada.

Mr. W. G. Cleevely, Co-ordinator of Capital Budgets, C.N.R.

Replies to questions asked by Honourable Senator Hays, to be provided by Air Canada, were ordered to be printed as an appendix to these proceedings.

On motion of the Honourable Senator Leonard, it was *Resolved* to report the Bill without amendment.

At 11.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,  
Clerk of the Committee.

## REPORT OF THE COMMITTEE

THURSDAY, November 28, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill C-124, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada", has in obedience to the order of reference of November 20th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,  
Chairman.

## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Thursday, November 28, 1968.

The Standing Committee on Transport and Communications, to which was referred Bill C-124, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1968, to the 30th day of June, 1969, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and by Air Canada, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson (Chairman)** in the Chair.

**The Chairman:** Honourable senators, we have before us for consideration the type of bill we have had every year for a long time, namely, Bill C-124, an act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the current year.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

**The Chairman:** Honourable senators, we have with us this morning pretty much the same group of gentlemen from Montreal we had with us last year. I remember that last year this meeting was presided over by Senator Leonard, and we are glad to have Senator Leonard here this morning.

On my immediate right is Mr. R. T. Vaughan, Vice-President and Secretary of Canadian National Railways, and Secretary of Air Canada; Mr. J. M. Duncan, Assistant General Counsel of C.N.R.; Mr. W. G. Cleevly, Coordinator of Capital Budgets, C.N.R.; Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada; and Mr. D. F. Atkinson, Chief of Budget and Cost Controls, Air Canada. We also have with us a gentleman we see

frequently, and we are glad to see him here, Walter Smith, Executive Representative of C.N.R.

I will ask Mr. Vaughan to make a statement, and then we will hear from some of the other gentlemen.

**Mr. R. T. Vaughan (Vice-President and Secretary of Canadian National Railways and Secretary of Air Canada):** Thank you, Mr. Chairman, and good morning, senators. May I say again that it is a great pleasure for me and the other officers of the two companies to appear before you and to endeavour to assist you in explanation and deliberation on this important piece of legislation, Bill C-124.

It is a technical piece of legislation which concerns, in the main, the financial arrangements which are required for the two national companies.

With your permission, Mr. Chairman and senators, what I would like to suggest, if it meets with your approval, is, as we have done in the past, that I ask the counsel, Mr. Duncan, to give you a brief explanation of the bill and then, following that, we will take whatever questions you wish.

**The Chairman:** Thank you, Mr. Vaughan. May we ask Mr. Duncan to speak to the committee?

**Mr. J. M. Duncan, Assistant General Counsel, Canadian National Railways:** Thank you, Mr. Chairman. Bill C-124, the Canadian National Railways Financing and Guarantee Act, 1968, is the current in a series of annual acts which cover the capital and other financial requirements of Canadian National Railways, and which, in form and principle, change very little from year to year.

Speaking in general terms with respect to what Mr. Vaughan has properly said is a very technical piece of legislation, its purposes might be said to be, firstly, the provision of statutory authority for the making by Canadian National of capital expenditures and commitments during 1968, and the first six

months of 1969; secondly, provisions relating to the sources of money required to meet those expenses; thirdly, provisions with respect to Air Canada borrowings from the Government, or with Government guarantees; and fourthly, the provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National or of Air Canada.

Because of the technical nature of the bill, and notwithstanding this committee's scrutiny of similar bills on previous occasions, I presume you would wish me to deal with its several clauses in order; and if that be the pleasure of the committee, I would propose to do so at this time.

Section 1 merely designates the short title of the act.

Section 2 sets out convenient definitions which really have not been changed for many years.

Section 3(1) covers Canadian National programs of capital expenditure for 1968 and the first half of 1969. Because of the practical necessity of programming and following through capital projects from one year to the next, and because of the delays that unavoidably occur in the handling of our capital budget and the related legislation, it has been found necessary, and it has been the regular practice, to cover not only the current year's program but also their continuation and projection into the first six months of the following year.

Accordingly, section 3(1)(a) covers the capital expenditures for the year 1968 to an aggregate of \$264,400,000.

Subparagraph (b) of the same subsection covers the authority to make capital expenditures for the first six months of 1969 in discharge of obligations which were incurred prior to 1969.

Subparagraph (c) authorizes the new capital commitments prior to July 1, 1969 in respect of obligations that will come in course of payment after 1968.

**Senator Leonard:** Mr. Chairman might we stop there in order to ask a question?

**The Chairman:** Yes.

**Senator Leonard:** How much of paragraph (a) was in a similar clause in last year's bill, and at the same time how much of clause ...

**Mr. Vaughan:** I see what you mean, senator. You mean taking section 3(1)(a) and (b) and (c) ...

**Senator Leonard:** Yes, what was the amount for the first six months of 1968 in last year's bill. Would you also give the figure for the contracts? Those two figures should have some relationship to the \$264 million, should they not?

**Mr. Vaughan:** It may not necessarily add up to it. In other words, all of paragraph (b) would not necessarily go up in there—only the portion that was used. Similarly, only the portion of (c) that was used and actually committed...

**Senator Leonard:** When you have the figures perhaps you would then give us an explanation as to why they are up or down.

**Mr. Vaughan:** Yes, I will check that point. I have it now. Looking at last year's bill under (b), there is a total of \$80 million in section 3(1) (a), and for Air Canada \$55 million.

**Senator Leonard:** That is \$135 million of the \$264 million you anticipated a year ago?

**Mr. Vaughan:** That is right.

**Senator Fournier (Madawaska-Restigouche):** Could I ask a question? What is included in "road property", roughly speaking?

**Mr. Vaughan:** Road property, senator, is the railway as you would see it—the right of way, the tracks, the ties, the fastenings, the bridges, the trestles, the ballasting, and all such things that go into the general facility of the railways's basic property.

**Senator Fournier (Madawaska-Restigouche):** Does that include the C.T.C.

**Mr. Vaughan:** Yes, that would include C.T.C.—Centralized Traffic Control. That is a method whereby you dispatch trains and regulate the flow of traffic.

**Mr. Duncan:** Subsection 2 of section 3 authorizes Canadian National to make public borrowings...

**Senator Hays:** Could I ask another question? Have you a breakdown of the \$75 million for Air Canada?

**Mr. Vaughan:** Do you want to know the elements that go into making up that amount?

**Senator Hays:** Yes.

**Mr. Vaughan:** Yes, we have that. Perhaps we can proceed while that information is being looked up?



**Mr. H. Duncan Laing, Assistant Vice-President of Finance, Air Canada:** These amounts are for property and equipment. Shall I round the figures off to the nearest thousand?

**Senator Hays:** Yes.

**Mr. Laing:** \$150,934,000 for property and equipment; \$12,320,000 for additional inventory—materials and supplies; \$8,500,000 for investment in an affiliated company, for a grand total of \$171,754,000. Then you deduct from that internally generated funds of \$73,754,000, leaving you a net external financing requirement of \$98 million, of which the \$75 million is a component.

**Mr. Vaughan:** But he wants to know what is the breakdown of the \$75 million. Most of it is for airplanes.

**Mr. Laing:** Oh, yes.

**Mr. Vaughan:** If you wish to know how many of each type of airplane, then we can get that information for you.

**Senator Desruisseaux:** Mr. Chairman, are these planes that are to be delivered shortly to Air Canada?

**Mr. Vaughan:** I beg your pardon, senator?

**Senator Desruisseaux:** Is that amount of \$75 million for airplanes that are to be delivered in January or so?

**Mr. Vaughan:** Were the airplanes to be delivered commencing in January?

**Senator Desruisseaux:** Yes.

**Mr. Vaughan:** Yes.

**Senator Leonard:** How many dollars per plane is contained in this figure of \$75 million. In other words, what did Air Canada actually spend in 1968 for airplanes?

**Mr. Laing:** \$118 million.

**Senator Hays:** That was spent for airplanes last year?

**Mr. Laing:** Yes, for airplanes in 1968.

**Senator Leonard:** And they were mostly DC-9's?

**Mr. Laing:** Some DC-8s, but mostly DC-9s.

**Senator Hays:** How many DC-9s does Air Canada now own?

**Mr. Vaughan:** As of November 27th, there are 27 DC-9s.

**Senator Hays:** And those are delivered? Are there some on order?

**Mr. Vaughan:** There are some more on order, yes, sir.

**Senator Hays:** Do you know how many more?

**Mr. Vaughan:** Eleven on order.

**Senator Hays:** Eleven more?

**Mr. Vaughan:** Yes.

**Senator Hays:** DC-8s?

**Mr. Vaughan:** You want the total now?

**Senator Hays:** Yes.

**Mr. Vaughan:** As of November 27 there are 27 DC-8s.

**Senator Hays:** Of those what are the stretched out ones?

**Mr. Vaughan:** Of those, seven.

**Senator Hays:** Seven stretched out?

**Mr. Vaughan:** Of the long bodies, as they call them.

**Senator Hays:** And on order?

**Mr. Vaughan:** Thirteen DC-8s on order.

**Senator Hays:** Stretched out and others as well, or all stretched out?

**Mr. D. F. Atkinson, Chief of Budgets and Cost Controls, Air Canada:** Those are all stretched.

**Senator Desruisseaux:** Would this mean it is the normal procedure to order the planes before being authorized to spend the money?

**Mr. Vaughan:** No, senator. Perhaps I could go back and give a little explanation of this. I want to assure you, honourable senators, that no money has been expended or committed without the proper order in council or legislative authority. As you will notice, this bill covers an 18-month period. The reason is to cover the budget for the specific calendar year and at the same time enable the company to have a six-month lead-time in order to commit itself to contracts. No money goes forward without Parliament having approved it in the proper sequence. I assure you that is correct.

**Senator Hollett:** Does the \$88 million for road property include the cost of the buses?

**Mr. Vaughan:** I cannot say whether it comes under that item or under "Equipment".

**Senator Hollett:** If it is not in that, where is it?

**Mr. Vaughan:** It would be in "Equipment".

**Senator Hollett:** Equipment?

**Mr. Vaughan:** Probably, yes.

**Mr. Clevely:** That is right.

**Senator Hollett:** Could you tell me how many buses and how much the buses cost?

**Mr. Vaughan:** We have 16 buses. I cannot give you the precise figure. I think they run at about \$20,000 a piece.

**Senator Hollett:** \$20,000 a piece?

**Mr. Vaughan:** I think so, subject to correction. Is that all you wished to know about that?

**Senator Hollett:** Yes.

**Mr. Vaughan:** I should like to make another comment about the Newfoundland situation, but perhaps we could leave it right there at the moment.

**Senator Hollett:** I should be glad to hear it.

**Senator Molson:** On what additional types of aircraft have there been advance payments?

**Mr. Vaughan:** Other than the DC-8s and DC-9s?

**Senator Molson:** Yes.

**Mr. Vaughan:** We have ordered three Boeing 747's. That is a large aircraft not yet flying, but it will be this month. Air Canada has placed orders for three of those.

**Senator Molson:** Jumbos?

**Mr. Vaughan:** Yes, that is the parlance used for it.

**Senator Leonard:** What is the passenger capacity?

**Mr. Vaughan:** The passenger capacity of those planes, depending on the configuration, would be approximately 400.

**Senator Leonard:** How do you handle 400 passengers at any of our airports in Canada with their baggage and so on?

**Mr. Vaughan:** Air Canada will not obtain delivery of those planes until 1971. As you know, Air Canada neither builds nor designs all the airports and buildings. However, there has been consultation going on within the Department of Transport and Air Canada—in fact all over the world—dealing with this new generation of aircraft coming along. The advantage of large aircraft is not just to carry a big crowd of people; there are certain cost elements and savings involved. This is the reason the technology seems to be advancing towards this end. Also, I suppose you have heard about the supersonics. We are in an air age that has a rapid increase in its technology and improvements. You are right, senator, there will perhaps be congestion at some places, and there is now for that matter. Nevertheless, the company must be progressive and competent. These are the planes of the future and Air Canada is a company of the future.

**Senator Molson:** I do not think my question was fully answered.

**The Chairman:** Would you say which part was not answered?

**Senator Molson:** What other types?

**Mr. Vaughan:** I mentioned the Boeing 747.

**Senator Molson:** Yes, but has there been any advance payments on DC-10s, Lockheeds or any other aircraft?

**Mr. Vaughan:** No, sir.

**Senator Molson:** None at all?

**Mr. Vaughan:** No.

**Senator Molson:** The Concorde?

**Mr. Vaughan:** We have not ordered Concorde nor SSTs. The SST is a United States supersonic transport and that program is not advancing very quickly at the moment. The Concorde is also a supersonic aircraft which has been designed and is being constructed by Britain and France. That aircraft has not flown yet. Two or three years ago when the production of supersonics seemed to be imminent Air Canada did purchase queue positions, as they are called, but it was not an ordering of the aeroplane, nor had the company fully committed itself to buy the aeroplane. What we did was to obtain a queue position with a down payment of certain moneys, and if these aeroplanes are not produced we recover our money. We have not ordered these aircraft.

**Senator Molson:** I asked how much money had been advanced on other designs of aircraft than DC-8s and DC-9s.

**Mr. Vaughan:** You asked me what type first and I tried to answer that. I did not know you wanted the amount. If you wish to have the amount we will get it for you.

**Senator Molson:** Thank you.

**Mr. Vaughan:** The ordering of the 747s was for delivery in 1971 and the financial people will get the figure for me in a moment. You want to know how much money we have advanced for the ordering of 747s.

**Mr. Laing:** Is that at the end of 1967 or up to date?

**Mr. Vaughan:** Up to date.

**The Chairman:** Senator Molson, we will come back to that in a moment. We will pass to another question while they are looking for the answer.

**Senator Desruisseaux:** In section 3(1)(a) under Investments of the companies you have listed another \$500,000. What would that be, sir?

**Mr. Vaughan:** What are those other companies?

**Senator Desruisseaux:** Are there many of them?

**Mr. W. G. Cleavelly, Co-ordinator of Capital Budgets, C.N.R.:** Two of them we have a 50 per cent interest in—there are two in the United States, Chicago and the Belt Line Chicago, and these are terminal roads. We have 10 per cent interest...

**The Chairman:** The acoustics in this room are very, very bad. Would you speak slowly, please.

**Mr. Vaughan:** Perhaps I could explain. The companies involved in this investment are the Toronto Terminal Railway Company which is jointly owned by the Canadian Pacific and Canadian National in Toronto. This is the Union Station on Front Street. That is the Toronto Terminal Railway Company. The other one is the Northern Alberta Railways, and it is jointly owned by Canadian National and Canadian Pacific. The next one is Chicago and Western Indiana Railroad. That is a terminal railway company which many United States companies participate in because of facilitation of traffic in Chicago, and we own

20 per cent of that company, I believe. Therefore, we have an apportionment of any expenditures required. The other one is the Belt Railway Company of Chicago and the total of our participation in these other companies is \$500,000.

**Senator Desruisseaux:** I was hoping that something would be mentioned about the New York situation in the way of a terminal.

**Mr. Vaughan:** You are speaking now of...

**Senator Desruisseaux:** The terminal facilities for Air Canada.

**Mr. Vaughan:** Yes. There is quite a bit of congestion there, as we well recognize. The company operates at Kennedy Airport. You may have noticed that there is new construction going on there and Air Canada is in participation with BOAC and is constructing a new building there under the jurisdiction of the New York Port Authority.

**Senator Desruisseaux:** Is this in here, sir?

**Mr. Vaughan:** This would be in Air Canada's capital budget. Perhaps you understand, this legislation is the final piece of legislation that picks up from where we left off last year and implements by statute the particular borrowings that may be required by the two companies.

**Senator Hays:** Mr. Chairman, probably there are other places where I could obtain this information and I apologize if I have not done my homework properly. I would like to know the number of Vanguards that Air Canada has and the phasing out of these planes, how much they are written off and what your recovery is and whether they are being used for freight purposes.

**Mr. Vaughan:** We have 23 Vanguard aircraft right now. Those aircraft are going to be written down and will be written down in the very near future.

**Senator Leonard:** Written off or written down?

**Mr. Vaughan:** Written down to practically zero.

**Mr. Laing:** The residual \$50,000 each.

**Senator Hays:** How about the Viscounts? You have on order 11 DC9s and 13 DC8s. When you receive these, will this phase out all the Vanguards and Viscounts as far as passenger traffic is concerned?



**Mr. Vaughan:** Perhaps we can answer that in a general way. These propeller airplanes will be obsolete in due course, and I am not sure of the particular phasing in 1973-74, as to whether we have any Viscounts in operation then or not. But, in any event, senator, the propeller airplanes, which are the Viscounts and Vanguards, will be phased out of service.

**Senator Hays:** My question was, you have now about 24 aircraft on order...

**Mr. Vaughan:** Yes.

**Senator Hays:** ...that you will be receiving in the very near future, I suppose, and you have 23—and was it 22—about 40 Viscounts and Vanguards?

**Mr. Vaughan:** Thirty-nine Viscounts and 23 Vanguards.

**Senator Hays:** Will these be phased out immediately, when the new jet aircraft come in?

**Mr. Vaughan:** No, not immediately.

**Senator Hays:** Will any be used for freight, or is it economical to use the Vanguard for freight?

**Mr. Vaughan:** We are examining right now, within the company, the Vanguard situation, whether, as you suggest, it could be properly used for freight or properly used in any other type of service. We have not reached a definitive conclusion on that yet, but we are examining the very matter you raise.

**The Chairman:** Gentlemen, may we now come back to Senator Molson's question? I think Mr. Laing was getting the answer to your last question, Senator Molson.

**Mr. Vaughan:** Senator Molson, on the Boeing 747's we have paid down, to date, \$3.1 million. On the U.S. supersonics we have paid certain moneys, approximately \$1.3 million, but it is subject to return, so that would be \$1.3 million for the U.S. aircraft and \$1 million for the Concorde.

**Senator Molson:** In the case of the Concorde, it could be returned if the order were not proceeded with?

**Mr. Vaughan:** Yes, sir. I do not have the legal agreements with me, but if the airplanes do not fly we get our money back. This was to protect our future position.

**Senator Kinley:** Mr. Vaughan, what is the experience with the railway land transportation in the Maritimes in comparison to the whole system? Do they have big losses in the Maritimes, or is it profitable there?

**Mr. Vaughan:** In our system accounting we do not segregate accounts by provinces but rather by regional groupings, so to speak. I am not certain of the overall situation in the Maritimes. There are certain services down there, as you know, that we operate on behalf of the Government of Canada—for instance, the ferry services between North Sydney and Port aux Basques and Argentia. Similarly, the ferry services on the Northumberland Strait we operate on behalf of the Government of Canada pursuant to certain estimates. Those services are again pursuant to certain terms of Confederation. With regard to those services you will see estimates that come forward in various appropriations, and those services are paid for in accordance with the conditions of entry into the union.

**Senator Kinley:** Do you mean they are all losing money?

**Mr. Vaughan:** If you wish to put it that way. I would not put it that way, exactly. These are services which Canada deems it should have. But if you talk to me about whether a ferry service between Point A and Point B is making money, the answer is "No."

**Senator Kinley:** They are not all losing money?

**Mr. Vaughan:** None of them are making money!

**Senator Kinley:** Let us take the Intercolonial Railway, so-called. Does that road pay you?

**Mr. Vaughan:** The Intercolonial, the I.C.R.?

**Senator Kinley:** Yes, the I.C.R.

**Mr. Vaughan:** Well, of course, senator, you have read the history of this as well. It is that the Intercolonial Railway and the route it took back in those days was not regarded as the best route; it took the long loop. But that railway line is carrying a lot of our freight and is a necessary element of our system. However, I do not have the figures broken down into those old segments of the railways.

**Senator Kinley:** Does the N.T.R. pay? You run it two ways.

**Mr. Vaughan:** Yes, that is correct.



**Senator Kinley:** Is that a paying part of your road?

**Mr. Vaughan:** It depends on which element you want to talk to.

**Senator Kinley:** I am told it is.

**Mr. Vaughan:** I would like to know what lies behind the question.

**Senator Kinley:** I am sorry, I did not hear you.

**Mr. Vaughan:** I said it would help me if I knew what lies behind your question, because we have overall, in the Canadian National system, a deficit. So, it is very difficult to say that the Maritimes region is making money and the others are not, because that is not in the densely populated part of Canada, and I am speaking mainly of freight now rather than passenger.

**Senator Kinley:** You have lowered the rates on your trains, *The Scotian*, *The Ocean Limited*, and so on. Is that a proper thing to do?

**Mr. Vaughan:** You are speaking of the passenger arrangements?

**Senator Kinley:** Yes.

**The Chairman:** Honourable senators, I can see we have a broad subject to discuss...

**Senator Kinley:** I know, Mr. Chairman, but...

**The Chairman:** Order!

**Senator Kinley:** ...but with regard to the railway, this is the only chance we have to talk to them, and we naturally must go far afield.

**The Chairman:** I must say this, Senator Kinley, that there will be ample opportunity to ask all the questions anyone wants to ask before this committee. If we have to adjourn and carry on for days, we will do so, but I do think that we should continue with the bill.

**Senator Kinley:** Mr. Chairman...

**The Chairman:** Order!

**Senator Macdonald (Cape Breton):** Let him finish, Mr. Chairman.

**The Chairman:** I am in the hands of the committee.

**Senator Kinley:** In the lower house there is a special committee to deal with these matters. Here this is the only chance we have to ask questions, when these people are borrowing the money, and if you cannot ask them then, when can you? I do not think you can accuse me of delaying the committee. This is the first time I have spoken in this committee, and nearly everybody has spoken, but I think we are perfectly in order in finding out what the railroad is doing. I only want to find out about this because in the Maritimes it is the big question. I want to find out if the railroads are performing properly or not with regard to the services between Prince Edward Island and New Brunswick, Newfoundland and Nova Scotia, and Nova Scotia and the United States. They are always loaded with passengers and freight, and I cannot see why they should have a loss.

**The Chairman:** Honourable senators, the chairman is in the hands of the committee. Senator Kinley is quite right. Every member of the committee should have an opportunity to ask all the questions he wishes about the railway and the air line. I think, however, the committee must proceed in such a manner that we can do this in an orderly fashion. Consequently, I would suggest that we ask Mr. Duncan to proceed with his statement, after which the meeting will be open for questions. Is that satisfactory to the committee?

**Senator Macdonald:** I have one question in relation to the ferry service between North Sydney and Port aux Basques, and it will not take a moment.

**The Chairman:** If questions are to be continued now, then Senator Kinley has the floor—that is, unless you are willing to wait until after the statement is completed, Senator Kinley.

**Senator Kinley:** Let me put it in this way: May I have a considered answer by the officials of the railroad to my questions after the meeting adjourns? I will put my questions, and they can be answered afterwards.

**Mr. Vaughan:** Certainly.

**Senator Kinley:** My first question is: Is the Maritimes a profitable part of the railway in comparison with other parts of Canada? My second question is: Do the ferries pay, and if they do not pay, why not?

**The Chairman:** Thank you, senator. We will definitely come back to those questions.

**Senator Kinley:** You see, Canadian National is concerned now with the sea, the land and the air.

**The Chairman:** Senator Rattenbury, in the light of our discussion, do you want to proceed with your question now or later?

**Senator Rattenbury:** No, Mr. Chairman, you have shot me down in flames.

**The Chairman:** Do you want to proceed, Senator Macdonald?

**Senator Macdonald:** Yes. Am I correct in my understanding that one of the terms of Union between Newfoundland and Canada is that Canada will provide ferry service to Newfoundland, and the Government has asked the C.N.R. to operate that service. Consequently, any loss sustained is not sustained by the C.N.R., but is covered by a subsidy from the Government of Canada?

**Mr. Vaughan:** That is correct.

**The Chairman:** Honourable senators, may I now ask Mr. Duncan to proceed to the conclusion of his remarks, after which the field will be open for any questions you want to ask.

**Senator Desruisseaux:** I am sorry, Mr. Chairman, but with respect to section 3(1)(b) there is, for instance, in (b) the words:

to make capital expenditures not exceeding in the aggregate \$75,000,000.

This is an unsplit figure, and so is the figure of \$90 million in paragraph (c). Is Air Canada's investments sharing in this? Is there an element of investment in this?

**Mr. Vaughan:** No, there is a further section in the bill—you will see that section 7(1) refers to Air Canada.

**The Chairman:** Mr. Duncan?

**Mr. Duncan:** Section 3(2) authorizes Canadian National to make public borrowings in respect of certain specific items in connection with the capital requirements, mainly in respect of advances to Air Canada and in respect to branch line construction, and also for the purpose of repaying to the Minister of Finance any loans which are made by him to Canadian National for either of the above purposes.

Section 3(3) requires that the annual report of Canadian National will record the amounts of any such borrowings.

Consistent with the practice of overlapping annual authorities—this is what Mr. Vaughan

was referring to earlier—section 3(4) requires that the capital expenditures authorized to be made for the first six months of 1969 will be included in the current year's portion of the 1969 budget.

Section 3(5) similarly requires amounts to become payable under the capital commitment made pursuant to the authority contained in section 3(1)(c) must be included in the budget for that year in which the payment will become due. Thus, each year's budget will disclose all of the capital expenditures to be made in that year, notwithstanding the fact that some of those expenditures will inevitably relate to commitments authorized and made in previous years.

Section 3(6) limits Canadian National's capital spending authority to the purposes mentioned in section 3, and specifically provides that expenditures made under authority of that portion of the act of 1967—that is, last year's act—which cover the first six months of 1968 will be deemed to be expenditures made under the current year's portion of the 1968 act.

Section 4 also serves a number of purposes which in this case are related to the sources of capital funds. Subsection (1) authorizes and governs the issuance of securities required in the case of any public borrowings under subsection (2) of section 3. Subsection (2) of section 4 requires that certain internally generated funds will be used to meet approved capital expenditures. Subsection (3) fixes at \$91 million the amount of the public securities that may be issued for the purposes of this act, or of the portion of the preceding year's act relating to the first six months of 1968.

The figure of \$91 million represents the aggregate of the following items: branch lines, \$10 million; investment in Air Canada, \$75 million, as it appears in section 3(1a); plus a further \$6 million related to branch lines provided for in paragraph (b) of section 3(1). Thus, consistent with subsection (2) of section 3, Canadian National's total borrowings under the authority of the act are limited to \$16 million for branch line construction, and \$75 million to service capital requirements of Air Canada. All of our other capital requirements of Canadian National are to be met without borrowing.

By section 5 the Government is authorized to guarantee the securities which I have been referring to, and by section 6 procedures are established to govern the custody of the proceeds of such securities, and their application to the intended purposes.



Section 7 has been added to this bill to serve a purpose that had not been previously provided for, namely, the borrowing of . . .

**Senator Pearson:** Mr. Chairman, could we have some order. I cannot hear.

**The Chairman:** Yes. Order, please.

**Mr. Duncan:** Section 7 provides for the borrowing of capital moneys by Air Canada in its own name, either by way of loans out of the Consolidated Revenue Fund or by a guaranteed public issue—that is, bonds and debentures, guaranteed by the Government of Canada. Section 7(4) provides that the aggregate principal amount of all such borrowings is to be fixed at \$130 million, except that section 7(5) makes provision for temporary coverage—generally, the short period of time which might occur when both the loans from the Fund and public securities issued to meet such loans would necessarily be outstanding. In other words, there will be an overlapping period.

Subsections (6) and (7) of section 7 govern the custody and application of the proceeds of such guaranteed public issues.

Section 8 provides for the signature and the effect of such guarantees of CN securities or Air Canada debentures which are issued under the act.

Section 9(1) provides in respect of Canadian National for the making of loans out of the Consolidated Revenue Fund as an alternative to public issues. Section 9(2) limits the maximum aggregate principal amount of loans to the \$91 million that is provided for in section 4(3). By subsection (3) of section 9 provision is made to regularize any temporary coverage of outstanding amounts which are necessarily incidental to the issuance of public securities to retire government loans.

The remaining few sections of the act are carried forward virtually unchanged, except as to effective dates, from previous Financial and Guarantee Acts and they may not require any more than just a passing mention.

Section 10 permits consolidation of the capital requirements of the constituent companies of the Canadian National system so that, while Canadian National Railway Company occupies the focal point and would be the borrower in respect of any financing, the needs of all the constituent companies of Canadian National Railways may be served. In effect the budget is that of Canadian National Railways and not only of Canadian National Railway Company.

Sections 11 and 12, which are identical in form, deal respectively with the Canadian National and Air Canada, and provide that at any time prior to July 1, 1969, when the earnings of the company or either of them are insufficient to meet the operating requirements, the Minister of Finance may advance moneys to cover the deficiency, subject to repayment to the extent possible.

Sections 13 and 14 continue special financial arrangements originally included in the Canadian National Railways Capital Revision Act, 1952, for a fixed term, which fixed term has since elapsed. For the past several years these provisions have been contained in every Financing and Guarantee Act.

Section 13 would relieve the company of the payment of interest upon a sum of \$100 million.

Section 14 provides for the purchase by the Minister of Finance of preference stock in C.N. in an amount equal to three per cent of the system's gross annual earnings. This constitutes another of the sources of funds to meet the capital requirements.

Section 15 is another of the category of special clauses and implements the statutory provision that Parliament will appoint independent auditors to audit the accounts of the C.N. system.

That, Mr. Chairman, concludes my review of the bill.

**The Chairman:** Thank you, very much, Mr. Duncan. Honourable senators, if it is agreeable to you we will proceed to questions any of you may wish to ask. I would first ask Senator Kinley if he wishes to proceed with his line of questioning.

**Senator Kinley:** This is capital money. Is any of it used for maintenance?

**Mr. Vaughan:** Yes. On the road property, for instance, you would have certain moneys required each year for the maintenance of the property. Certain of it would be new track and that would be capitalized; a certain portion of laying the new track would be what you would call an operating expense. In accounting this is the method used. The answer to your question, therefore, is Yes.

**Senator Kinley:** Is there not a provision limiting the amount you can spend on sidings and branch railways without coming to Parliament?

**Mr. Vaughan:** I think you may be referring to the length of new branch line that we may build.

**Senator Kinley:** Yes.

**Mr. Vaughan:** That used to be six miles. The act was amended and we can now build a branch line up to 20 miles as long as we have the capital authorized. We can proceed with construction of a branch line up to 20 miles without the necessity of a special act of Parliament.

**Senator Kinley:** In this borrowing for the railroad your deficit is paid from Parliament separate from this altogether, is it not?

**Mr. Vaughan:** This legislation provides the authority to the Government to pay the deficit of Canadian National yes.

**Senator Kinley:** The Maritimes are very interested in this question of transport and it is nice to know that this is of benefit to Canada.

**Mr. Vaughan:** I should like to say that the Maritimes are of benefit to Canada. Senator Kinley, I am a Maritimer from Halifax, down near your home town of Lunenburg, and I have great affection for Nova Scotia, as I know you do.

**Senator Kinley:** Thank you.

**Mr. Vaughan:** There should not be any doubt about that.

**Senator Kinley:** I am all for the railroads, you know, but I like to see good business too.

**The Chairman:** Senator Rattenbury was next.

**Senator Rattenbury:** I took the opportunity to speak to one of the witnesses here, Mr. Laing, privately so I have really had my question answered. I did that in order to get on with the proceedings.

**Senator Flynn:** With regard to the expenditures authorized by section 2, we had Mr. Vaughan's assurance that no money was spent without proper authority having first been obtained. I should like him to be more explicit about the procedure, because I see that the national system is authorized to make capital expenditures not exceeding \$264 million in the current year, 1968. We are now in December, and I suppose most of this sum has already been spent. I should like to have the machinery explained.

**Mr. Vaughan:** The procedure is that the Canadian National Railway Company and Air Canada about this time of each year would go

through the process of preparing its capital budgets for next year. This is what we are doing right now at home, preparing the budgets for 1969. When that is done—and there is a lot of discussion about this across the system with the various officers—they go to the board of directors of each company. The boards of directors examine the budgets in detail and once the budgets are reviewed, approved or changed in some manner, they are submitted to the Minister of Transport and the Minister of Finance, pursuant to the Financial Administration Act, section 80, which is not now before you but is on the statute books. The budgets then go forward to the Government, and the officers of the company come to Ottawa and explain in detail to the departmental officers and the ministers what is involved in those budgets. If finally the Government agree with them, the budgets are then submitted to the Governor in Council who will pass an order in council based on what has been approved. The order in council, together with the budgets, is then tabled in Parliament.

The custom in previous years was to accomplish all of this in the spring of the year if we could. Some of that time schedule has been changed. Last spring Parliament was not sitting. Following the tabling of the budgets pursuant to the Financial Administration Act, the budgets are translated if I may phrase it this way, into this piece of legislation which contains certain other things that we have to do and we cannot get the money until you do pass this legislation. On this specific element of the budget that you refer to in Clause 3(1), most of that money will have been spent by now because we have to proceed with the maintenance of the railway. We do this on the basis of the custom and procedure of the Financial Administration Act and the order in council and the tabling of the budget in Parliament. This particular piece of legislation is required in order for (a) the Canadian National Railways to continue to have the Government purchase preferred stock; (b) to enable the Government to go to the Consolidated Revenue Fund to pay the deficit of Canadian National Railways; (c) it is required in order to provide for the borrowing that are shown here for Air Canada. Therefore, the legislation is very necessary. It is not an after-the-event matter at all I assure you.

**Senator Flynn:** I understand. Does it make much difference whether the bill is passed.



let us say, today or in two weeks, or if it had been passed two weeks prior?

**Mr. Vaughan:** You would do me a favour if you passed it today. We do need it because there are certain advances that must come from the Government pursuant to this legislation covering borrowings that Air Canada requires.

**Senator Flynn:** You mean ten days would make a big difference?

**Mr. Vaughan:** Yes.

**Senator Flynn:** I would like to know why. Since you have been authorized by other legal provisions to expend all this money indicated in Clause 3 (1), paragraph (a). What is the risk?

**Mr. Vaughan:** It is the borrowing part. If I may take you ahead a bit, it has nothing to do with Clause 3 (1). If you look further in the explanations that Mr. Duncan was giving and if you look on page 4 of the bill, Clause 4 (3) you will see an amount there of \$91 million and that amount provides \$75 million for Air Canada, \$16 million for Canadian National. There are certain borrowings that Air Canada require from the Government by the end of the year.

**Senator Flynn:** I was merely asking if passage of the bill took place on December 15, what difference would it make?

**Mr. Vaughan:** It is very vital to us that its passage not be delayed.

**Senator Flynn:** The Government should have come up with this bill much prior to this time.

**Mr. Vaughan:** I ask that you not ask me to comment on what the Government should or should not do. Let me put it this way, to this point in time there is no difficulty because of the non-passage of it. To this point we have experienced no difficulty because of its non-passage.

**Senator Flynn:** But today it is very urgent?

**Mr. Vaughan:** But that is a relative term.

**Senator Flynn:** In relative terms—I accept that.

**Senator Hollett:** I understand you are speaking for Canadian National. I would like to ask you this question: From where does the Canadian National get the authority to speak with the railway passenger service

in any one province and put in \$20,000 buses? Where do they get the authority from? Can they do it with any province, if they want to?

**Mr. Vaughan:** Senator, let me answer it this way. The Canadian National Railways, by statute, is directed to manage the affairs of the railway company.

**Senator Hollett:** Quite.

**Mr. Vaughan:** That, it tries to do in the best interests of Canada. It does that in compliance with all the legislation that exists relative to service.

With regard to your specific question on Newfoundland, there is provision under the National Transportation Act, which this Parliament passed a year ago, which contains now all the relevant sections of the Railway Act and the procedures that the railway company must follow in order to change or abandon a service. This applies to the Canadian Pacific and other railways as well.

In Newfoundland—and you referred to it as a province...

**Senator Hollett:** It is, I think!

**Mr. Vaughan:** Yes, it is, but I understood you to ask, do we have authority to abandon all the services in other provinces as well.

The Newfoundland situation was not approached on the basis of a province, but the fact that the railway there was all contained in one geographic location. We proceeded pursuant to the various statutes. There was a public hearing and various hearings before the Railway Committee of the Canadian Transport Commission, at which evidence was taken, and that commission, on the basis of the evidence, gave us permission eventually to abandon the railway passenger service pursuant to certain rules that were laid down in the order. Then we went forward and applied to the Public Utilities Commission in Newfoundland, if that is the correct description of that body, for permission to install a bus service. That is where we got the authority.

**Senator Hollett:** In other words, you got consent from the Public Utilities Commission in Newfoundland, is that it?

**Mr. Vaughan:** First of all, we got permission from the Canadian Transport Commission to change the service. Then, in order to put buses on, we went to the provincial body and applied and were granted permission to put the buses on.

**Senator Hollett:** I understand you lost \$980,000 last year in Newfoundland in the rail passenger service. Is that the reason why this change has been made, because you lost \$980,000? I think the loss last year of Canadian National was \$35 million, or something.

**Mr. Vaughan:** I can understand your wanting me to discuss this, and I will endeavour to make comments that I feel proper in the light of the circumstances. All the evidence was given to the Commission. The particular figure you have mentioned, \$980,000, or \$918,000, was the loss for the particular year...

**Senator Hollett:** 1967?

**Mr. Vaughan:** Yes, 1967, I believe it was. But you must bear in mind that what prompted us to go forward with that was that there had been, I presume, losses in preceding years.

**Senator Hollett:** You "presume"?

**Mr. Vaughan:** Well, I know. There were—I will be definite...

**Senator Hollett:** Is that not true of all railways across Canada?

**Mr. Vaughan:** Let me then finish my line of thought here.

**Senator Hollett:** Yes, surely.

**Mr. Vaughan:** The company does not wish to go about taking services off or irritating the citizens. This is not our forte in life. We do not do this because of some maliciousness, or anything else like that. The company officers there thought this would provide a better service in Newfoundland, because there had been the Trans-Canada Highway constructed, there was a good road system being built in Newfoundland, and the company officers in looking at this and the time it took the train to go from Port aux Basques around to St. John's, together with the factor of this new highway, thought they could provide a better service, and this is the reason that prompted us to do this.

**Senator Hollett:** In other words, the people do not have to be consulted in any way?

**Mr. Vaughan:** "The people"?

**Senator Hollett:** Yes, the people.

**Mr. Vaughan:** I did not say the people were not consulted.

**Senator Hollett:** Were they?

**Mr. Vaughan:** There was a public hearing.

**Senator Hollett:** Where?

**Mr. Vaughan:** In Newfoundland.

**Senator Flynn:** The Transport Commission?

**Mr. Vaughan:** Yes.

**Senator Flynn:** Headed by Mr. Pickersgill.

**Mr. Vaughan:** No, headed by Mr. David Jones.

**Senator Hollett:** You would not call that a public hearing, anyway!

**Mr. Vaughan:** Please do not engage me in other things than this.

**Senator Hollett:** I am not blaming you at all.

**Mr. Vaughan:** We went and appeared before the Railway Committee headed by Mr. David Jones.

Did you hear about the storm the other day in the Maritimes?

**Senator Hollett:** We live in the Atlantic provinces!

**Mr. Vaughan:** This was a Canadian Press story. If you would not mind my mentioning it, there was a heavy storm down there, and the report reads:

The snow clogged the Trans-Canada Highway, stopping most traffic, although C.N.R. buses successfully made transfer runs of train passengers between Bishop's Falls and Port aux Basques. The C.N.R. train Caribou, en route to Port aux Basques from St. John's, was halted by a rail washout at Bishop's Falls.

And the Canadian Press story goes on:

It was a clear victory for the buses over the train.

**Senator Hays:** Mr. Chairman, I do not need the answers today, but if I could have them in due course I would be very interested—that is, if this information is available and is not privileged.

My questions are these:

How many hours did you keep the DC-8s in the air in the last fiscal year? How many hours did you keep the DC-9s in the air? How does this compare with other airlines—C.P.A. or QANTAS—if this information is available? What is your load factor in order to make a plane pay? How many runs do not pay? What

are these runs? What do you propose to do about it, if they are not paying?

Then I would ask some other information on personnel on the planes:

What are the personnel in DC-8s and DC-9s in relation to other airlines? What would you pay for first-class meals in relationship to other airlines; and are these tendered?

**Mr. Vaughan:** Yes, senator; we would be glad to undertake to look at all those questions and provide you with information we consider would not interfere with our competitive situation.

*(For text of questions and answers, see Appendix "A").*

I would just say that I think Air Canada, in its utilization of aircraft, compares most favourably with other airlines.

**Mr. Laing:** A great deal depends on the route structure for which the airplanes are used. If you have long hauls you are going to compare very favourably.

**Senator Hays:** I realize that QANTAS would probably be able to keep a DC-8 or a 707 in the air because they have the longer runs, and so would CPA, but this information would be good to have.

**Mr. Vaughan:** Sometimes in comparing with other airlines, as Mr. Laing has said, you have to compare apples with apples, rather than apples with oranges, because of the difference.

**The Chairman:** Thank you. I understand that the answers to these questions will be supplied to the committee, and will be forwarded to Senator Hays.

**Senator Rattenbury:** And made available to the members of the committee?

**The Chairman:** Yes, and made available to the members of the committee.

**Senator Flynn:** Will they form part of the record?

**The Chairman:** If the committee wishes it, they will form part of the record.

**Senator Flynn:** Will they be supplied by way of letter, or will they be annexed to the minutes of the meeting?

**The Chairman:** Does the committee require that these be made an appendix to the record?

**Hon. Senators:** Agreed.

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**The Chairman:** Was your question supplementary to Senator Hays' question, Senator Leonard, because...

**Senator Leonard:** No, it will be under a separate heading.

**The Chairman:** Very well. Senator Burchill?

**Senator Burchill:** I should like to go back to the railways again, and speak about the operation of Canadian National in so far as the northern part of New Brunswick is concerned. When the officials of the railway last appeared before this committee the president was present and so was Mr. Macdougall, and at that time I complained that the C.N.R. service from Moncton to Ottawa gave a very, very poor connection at Montreal.

The Ocean Limited at that time was routed where it should be routed, around the north shore of New Brunswick, and where it always had been routed from the time it was established.

**Senator Fournier (Madawaska-Restigouche):** Easy, now.

**Senator Burchill:** It arrived at Montreal ten to fifteen minutes after the train left from Montreal to Ottawa. So, we sat there in the station for two hours until we could get the next train to Ottawa. When I acquainted the president, Mr. MacMillan, with that fact he was a bit surprised. I have here a great deal of correspondence in respect to this matter. He fixed it very nicely so that the Chaleur which was substituted for the Ocean Limited arrived at 7.30, I think, and the Ottawa train left at 8 o'clock. That gave us a very nice connection. That was fine, and I was very pleased with what Mr. MacMillan did.

Now, according to this winter schedule the whole thing is back again where it was before. The Chaleur arrives in Montreal at 8.30, and the Ottawa train pulls out at 8, and there we are.

**The Chairman:** Thank you, Senator Burchill.

**Senator Burchill:** We are back to where we were before. We have no air service. We are dependent upon the C.N.R. Of course, you know how popular you are with the mayors of Newcastle, Bathurst, and Chatham, and so on for robbing us of the Ocean Limited. However, I am not commenting on that,



because the Chaleur gives us wonderful service, but I am concerned about that connection at Montreal.

**The Chairman:** Senator McElman, have you a question?

**Senator Smith (Queens-Shelburne):** Do we not get a response to Senator Burchill's question?

**The Chairman:** You did not ask a question, Senator Burchill. I thought you were making a statement. Is there an answer to this?

**Mr. Vaughan:** I remember that. It was two years ago when we were here that you raised that matter.

**Senator Burchill:** It was in the spring of 1967—March 31, 1967.

**Mr. Vaughan:** In any event, I remember it well, and I remember looking at it. I will endeavour to look at it again. What you are saying is that so far as your travel plans are concerned the service is inconvenient to you. The presumption should not be that everybody coming from your area is going to proceed to Ottawa.

**Senator Burchill:** That is quite true.

**Mr. Vaughan:** We endeavour to make proper connections in respect of our trains to the convenience of the passengers, but it is not always possible to have a train arrive at the precise moment that allows you to proceed on another one—to proceed on your journey to Ottawa. This is rather difficult.

There is an earlier train, is there not? The Ocean Limited is ahead of that. In any event, I know it would be inconvenient to you to have to wait. What they try to do with these trains is to give a proper inter-city service. If we held up the departure of the train for Ottawa we lose that market which leaves at 8.10 in the morning and gets here at about 10.15. If the train is waiting on the other then the competitive factor has gone entirely.

Yes, there is a train from the Maritimes that arrives in Montreal to meet that . . .

**Senator Burchill:** Yes, but it does not go through our territory.

**Mr. Vaughan:** This is the great problem in operating a service industry. I wish we could please all of the people all of the time.

**Senator Burchill:** My question is: Why was the time of the Chaleur changed? We were getting along fine.

**Mr. Vaughan:** Well, I cannot give you an exact answer at this moment, but there were reasons as to traffic and equipment requirements. We changed greatly after 1967. After the heavy traffic flow due to Expo we did make certain changes.

**The Chairman:** May we leave this subject and proceed, because we have limited time at our disposal. Senator McElman?

**Senator McElman:** I am very much impressed by the concern of those from the central and western parts of the nation over the DC-8s, and DC-9s, the stretched DC-9s, the 707s, and so on, but, coming from Fredericton, the only occasion upon which I have anything to do with those aircraft is when I hear the westerners talking about them.

Last year when, I believe, Mr. Vaughan was here with the president on a similar bill I raised the matter of transportation to and from Fredericton, which is the capital of New Brunswick. I pointed out that we had no rail passenger service from either of the railways into that capital city. We had to travel in one direction approximately 27 miles by road to Fredericton Junction to get the C.P.R. train or 20 miles in the other direction by road to get the C.N. train at McGivney Junction. I expressed the hope that Air Canada would try to give Fredericton the very best possible type of air service in lieu of the lack of rail passenger service. At that time I was told that there were on order a number of DC-9s in respect of which they hoped for early delivery. I thought I had the intimation that one of those early deliveries would be placed on the Fredericton run to alleviate the problem that exists between Montreal and Fredericton. I must have made a wrong assumption because that never developed. I believe there have been additional deliveries of DC-9 aircraft . . .

**The Chairman:** What is your question, Senator McElman?

**Senator McElman:** I am coming to it, Mr. Chairman, if you will give me time.

My question is: Could we not now have some early commitment? I do not ask for it today, but I do ask for an early commitment that this provincial capital will be finally given jet service. I point out that the air strip there is capable of handling DC-9's. Could we not have some improvement in that service very soon?



**Mr. Vaughan:** Senator, I remember your remarks the last time we were here, and when I returned to Montreal I had the then president of the airline write to you, if I am not mistaken.

**Senator McElman:** I had a communication.

**Mr. Vaughan:** I will take note of your remarks and bring it to the attention of the operating and marketing officers of the company again and be in touch with you further.

**Senator McElman:** Thank you.

**Senator Fournier (Madawaska-Restigouche):** I am quite happy that the Ocean Limited should arrive in Edmundston at 7.30. We are quite happy with the new schedule. The Ocean Limited travels to Edmundston in the middle of the night, both ways, and we are happy. We are not asking for very much because we understand we cannot have every thing. While we are quite happy that the train should arrive at 7.30, surely you could find one to suit everybody.

Practically every year I have asked for an improvement in the transport service from the station here to the centre of the city. I do not know whether you read my remarks in the Senate last week. The transportation from the station to the city is certainly not what has been promised in this room by Canadian National, the N.C.C., the O.T.C., the City of Ottawa, and so on. Is there any prospect of improvement or is the answer that we must live with conditions as they are today?

**Mr. Vaughan:** Yes, senator, I did read your remarks about this the other day. I anticipated your question and took the trouble to find out something about it. We have been having difficulties there. As you know, the site is not as convenient as where the station used to be, when all the people had to do was walk across to the Chateau, which was very convenient. Now that the station has been moved we have had some difficulties with the taxi situation.

In any event, earlier this year we decided to dispense with the existing taxi concessionaire. We put out for public tenders for new taxi concessions at both the station and the Chateau Laurier. We wanted to incorporate in that a bus service performed by the taxi concessionaire, dedicated to travel between the station and the hotel. We did get a new taxi concessionaire and the contract for this service was let to Queensway Taxi, and

the bus is part of it. Due to delivery requirements the new bus service will not be operating until about mid-December. That is the latest word I have on it. That will be in addition to the taxis. In the meantime the service requirements are being handled, we think fairly satisfactorily, by the Queensway Taxi and the city bus that drops people there.

The matter you raised the other day relates to our train arriving at 10.10 and the Canadian Pacific train arriving at 10.15. The requirements for these two trains alone vary from 50 to 100 taxis daily, and they have been providing these. On November 19, the day to which you referred in your speech in the Senate, the City of Ottawa experienced a severe ice storm which hampered driving to a serious degree. As a result, the taxi dispatcher was just unable to marshal all the cabs required to meet these trains. It was therefore roughly, I guess, half an hour after the arrival of the second train before the last passenger from the first train was able to be moved. I know this can be very irritating to you and we recognize it. Altogether, though, a total of 80 cabs were provided, but with the build up of these services it was not adequate to cope with the delay that ensued. In any event, we are aware of this problem and are trying to correct it.

**Senator Fournier (Madawaska-Restigouche):** I agree with some of your answers, but I must point out that this does not happen on only one day. Let me give you the example of what happened on Tuesday, two days ago. When I was travelling by taxi from the station to Parliament Hill, every 30 seconds the dispatcher was saying over the air that more cars were needed at the station, so for 15 minutes after the train had arrived there were people waiting for taxis. That was Tuesday of this week. This is happening every day. To get that confirmed you have only to ask those who use these taxis twice a week.

**Mr. Vaughan:** Well, as I say, senator, we are aware of it and it is a problem. We are going to try to correct it.

**Senator Fournier (Madawaska-Restigouche):** Will the buses be operated by the taxi people or the C.N.R.?

**Mr. Vaughan:** By the taxi people.

**Senator Fournier (Madawaska-Restigouche):** We have a little problem with the buses. In the morning the 8.10 train from Montreal to Ottawa brings the business people here. It arrives at 10.09, but there is a bus

that leaves the station empty at 10 o'clock while the passengers off the train have to wait until 10.30 for the next one. There is no reason why this bus could not wait until the train arrives.

**Mr. Vaughan:** The new bus will be dedicated to the train service as I explained. The new bus will be operated by the taxi people, not the city transport authority, and will be dedicated to meeting the arrival of the trains. That is the purpose of it.

**Senator Fournier (Madawaska-Restigouche):** Will its route be between the station and the city?

**Mr. Vaughan:** The station and the Chateau. It will also leave the Chateau dedicated to the departure of the trains. When we have this in operation I hope it will improve the situation.

**Senator Fournier (Madawaska-Restigouche):** I hope so too.

**Senator Welch:** What air service do you have going into Prince Edward Island at the present time?

**Mr. Vaughan:** There is no Air Canada service to Prince Edward Island. It connects with the now E.P.A., Eastern Provincial Airways, formerly the Maritime Central Airways.

**Senator Welch:** I take it that going from Ottawa to Prince Edward Island today you would have to change at Moncton?

**Mr. Vaughan:** If you were flying that is correct.

**Senator Welch:** Is there any hope of Air Canada going in to Prince Edward Island?

**Senator Rattenbury:** Heaven forbid! As things are now, if Air Canada goes in there you will really have a shemozzle.

**Senator Welch:** I understand we have a shemozzle there now.

**Mr. Vaughan:** There are regional carriers there, private entrepreneurs. You will readily understand that I want to be careful how I answer that question. If I satisfy you, I dis-satisfy a host of other people.

**Senator Pearson:** Coming back to the bill, clause 2 (a) "National Company"—what is the division between the national company and the national system? Which one is in control? Are they the same board on both?

**Mr. Vaughan:** If you look in clause 2, "Interpretation", you will find:

(a) 'National company' means the Canadian National Railway Company;

(b) 'National System'...

**Mr. Duncan:** May I give you almost a legalistic answer, sir. Canadian National Railways is really not a corporate entity. It is a name given by the Canadian National Railways Act, to a group of companies constituting Canadian National Railways. Canadian National Railway Company is one of those companies.

**Senator Pearson:** The "system" is the whole picture.

**Mr. Duncan:** It is Canadian National Railways, whereas the Canadian National Railway Company is one of the constituent companies.

**Senator Leonard:** I do not know whether Mr. Vaughan is in a position, or wishes to answer this. It does not matter if he does not. I would be interested in knowing the comparison between the net operating position of the railway this year, say, up to October 31 or September 30 compared with previous years.

**Mr. Vaughan:** Yes. Our deficit for 1967 was \$35 million and we had budgeted for 1968, \$35 million again. The current financial situation is that we would be on budget, and perhaps better than budget; therefore, we are in a slightly improved position this year over last year.

**Senator Leonard:** That is what I wanted to know. Thank you.

The other question I had—this is new authority to Air Canada, is it not, to do its own borrowing directly through the public?

**Mr. Vaughan:** This clause 7 on page 5 of the bill is a new section in the act. It has not been in the act before this. You will see that it gives certain discretions in there which will allow the Governor in Council to authorize or guarantee certain issues by Air Canada. This borrowing could be done in two ways. It could be done directly by Air Canada and not through the C.N.R. through the Government, in which case they work out the arrangements for the debentures and rate of interest. Furthermore, this would provide also, and it has not been decided, the ability for Air Canada to borrow from other than the Government, on the market, with the loans or debentures guaranteed by the Government.

**Senator Leonard:** The idea really being to take it out from under the wing, as it has been in the past, using the Canadian National Railway Company to do that financing for it.

**Mr. Vaughan:** In a certain respect. This is a change from before whereas all of the borrowings came through the national company. So that there will not be any misunderstanding I want to add that the matter of future financing requirements of Air Canada is now under examination as between the company and the Government and its financial officers. And, of course, we have a new administration which was elected by the board on Tuesday and this will be a matter which they will direct their attention to. I would rather leave it, that this matter is receiving consideration.

**Senator McElman:** Mr. Chairman, I would like to draw Mr. Vaughan's attention to a situation of general policy which is causing hardship with respect to some employees in the Atlantic region, and to find out if there is any possibility of a change in this policy, as to whether a hard decision has been reached. It has to do with the proposed lay-off of approximately 20 per cent of the C.N.R. police force across the country.

In an area such as Toronto this lay-off, I understand, will affect people with seniority of only a maximum of about 13 months. In the Atlantic region it is going to affect a fair number of your police with service of up to 10 years and, in one case, a constable with service of 23 years, because of the smallness of the force and the effect it has when you hit the 20 percent mark. As well it relates to the fact that in the lay-off that I believe was made in 1967, at a similar time of year, although many were taken back on in other regions, none was taken back on in the Atlantic region. So, we are getting into people with real seniority in terms of service. Because of the relative hardship involved and the fact that there are in the force approximately 20 men who over the next four or five years will go on retirement, would it be possible to reconsider this decision and, as these men retire, not replace them, but retain these men who have a fair level of service and are about to go on the

street—I might say, in an area where there are not too many other employment opportunities?

**Mr. Vaughan:** Yes, senator, I appreciate your remarks. You understand that I would not know at this moment the detail of what discussions or questions or negotiations are going on relative to that particular work force; but I would like to say that I will be glad to look at it in light of the remarks you make. However, I would not want my remarks to be interpreted by any of the unions, if they hear about this, as an undertaking on my part today to reconsider anything that is in motion; but I will reconsider it in light of your remarks.

The company tries to be a good employer, and we do our best to be, but it is impossible for us to have a static employee levels all the time. We have to change our employee requirements in accordance with the traffic requirements, but there are certain union agreements involved, I presume, with these people you mention. I am not certain what clauses there are in those agreements that refer to severance or notice, or things like this, but on the point you make about long service people, I would like to say I will examine that.

**Senator McElman:** And you will advise me accordingly?

**Mr. Vaughan:** Yes. I do not think there have been any notices given yet, if I am correct; and I am not sure of your figure of 20 per cent. That does not ring a bell with me, but obviously you must have some authoritative information. In any event, I will look at it in light of your remarks.

**The Chairman:** Are there any further questions? Senator Kinley, do you have any more questions?

**Senator Leonard:** I move that the bill be reported without amendment.

**The Chairman:** All in favour?

**Hon. Senators:** Agreed.

The committee adjourned.



## APPENDIX "A"

## Question 1.

How many hours did you keep the DC-8s in the air in the last fiscal year?

## Question 2.

How many hours did you keep the DC-9s in the air? How does this compare with other airlines—CPA or Qantas—if this information is available?

DAILY AIRCRAFT UTILIZATION—  
DC-8 & DC-9 AIRCRAFT

Average Revenue Take-off  
to Touch-down Hours  
Per Aircraft per  
Day—1967

	DC-8	DC-9
Braniff .....	9.3	—
Continental ...	—	8.9
Delta .....	10.4	8.1
Eastern .....	8.0	5.4
National .....	10.4	—
Northeast ....	—	5.8
Pan American..	9.7	—
Trans World ..	—	6.4
United .....	9.9	—
Average	9.7	6.8
Air Canada	9.8	7.6

Average Revenue Block-  
to-Block Hours Per  
Aircraft per  
Day—1966

## Latest ICAO Data

Canadian		
Pacific .....	13.8	—
Qantas (B-707 aircraft) ....	7.3	—
Air Canada ...	9.9	7.0

Note: It will be noted that comparative aircraft utilization data for the year 1967 was determined on a take-off to touch-down basis, while the CPA and Qantas figures for the year 1966, the latest available, were calculated on a block-to-block basis, which, in effect, means ramp to ramp.

## Question 3.

What is your load factor in order to make a plane pay?

## Break-even Load Factor

The load factor required to break even depends upon the type of aircraft and the route. Unit prices vary to a limited degree by route and unit costs vary extensively by route and by aircraft type.

The two major aircraft types in Air Canada's fleet during 1967 were the DC-8 and the DC-9. Based on their deployment to routes last year, the break-even load factor was:

Standard DC-8 (133 seats)	48%
Long-bodied DC-9 (94 seats)	53%

Additional DC-8 and DC-9 aircraft have been added to the fleets during 1968 and break-even load factors are expected to be lower this year than last.

## Question 4.

How many runs don't pay? What are these runs? What do you propose to do about it if they are not paying?

## Unprofitable Routes

Air Canada maintains operating revenues and fully allocated costs for a segregation of 30 individual routes comprising its system operation. Based on this breakdown, 10 of the routes during the calendar year 1967 earned operating revenues in excess of fully allocated operating expenses, while 20 did not. However, of the latter 20, there were only 8 whose revenues failed to cover their direct route expenses which consist of direct flying costs, local station operations and district sales expenses. In other words, only 8 routes failed to make a contribution to Company indirect/overhead expenses. These 8 routes were a small proportion of the system, accounting for only 6.8% of the total route revenues. Having regard for Senator Hays' remarks concerning privileged information, Air Canada prefers not to reveal the identity of these routes.

Air Canada is continually taking steps to improve the Corporation's financial results on all routes by introducing more efficient aircraft, deploying them better, planning improved load factors, adjusting fares and rates and cost control generally, including the advantages inherent in more modern and efficient support facilities.



## Question 5.

What are the personnel in DC-8s and DC-9s in relation to other airlines?

## Crew Complements—DC-8 and DC-9 Aircraft

	Standard DC-8 (133 seats)	Long-bodied DC-8 (198 seats)	DC-9 (94 seats)
<b>Flight Crew</b>			
Pilots—All services	3	3	2
Navigators—Trans-Atlantic & Outer Caribbean Only	1	1	-
<b>Cabin Crew</b>			
Domestic	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{3}{4}$
Trans-Atlantic	5	7	-
Southern	6	7	4

On domestic services, an extra crew member may be carried on short-haul flights involving meal or bar service; further, an additional crew member may be carried as traffic circumstances warrant, such as in peak season periods when passenger loads are large, with a greater proportion of mothers and infants.

Air Canada crew complements are in keeping with standards in the industry generally for corresponding aircraft types and services.

## Question 6.

What would you pay for First Class meals in relation to other airlines and are these tendered?

Within Canada, the majority of Air Canada's flight meals are purchased from one major supplier on a contract basis. The types

of meals purchased are numerous and depend upon the time of day, type of aircraft, nature of the route and the flying time, to mention a few of the principal factors.

Units costs for meal service of any airline are influenced by standards of service, the length of the route and the incidence of flight meals served as dictated by the schedule. There follows a comparison of Air Canada with six U.S. trunk airlines and CPA for 1967:

## Flight Meal Expense Per Revenue Passenger Mile

American .....	.284¢ Cdn.
Braniff .....	.192
Delta .....	.234
Eastern .....	.227
Northwest ....	.222
Trans-World ..	.201
Average .....	.230
Air Canada ...	.227
CPA .....	.252

Throughout the system, Air Canada has contracts with over two dozen caterers. The company welcomes competitive quotations when contracts are being renewed, and, in fact, bids are considered at those locations where competitive catering establishments exist. However, at many major Canadian points, acceptable alternative suppliers who would be in a position to meet the Corporation's demand for quality and volume at competitive costs are at present non-existent.









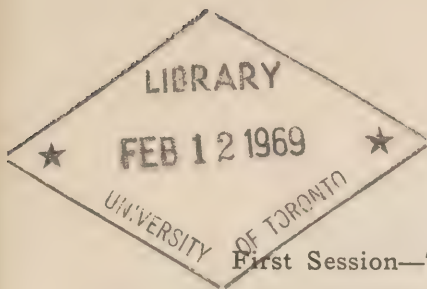












Government  
Publications

First Session—Twenty-eighth Parliament  
1968

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING COMMITTEE ON  
**TRANSPORT AND COMMUNICATIONS**

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The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 5

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*Complete Proceedings on Bill S-19,*

intituled:

An Act to amend the Navigable Waters Protection Act.

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THURSDAY, DECEMBER 19, 1968

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WITNESSES:

*Department of Transport:* Jacques Fortier, Q.C., Counsel and Director  
of Legal Services. J. N. Ballinger, Chief, Aids to Navigation  
Division.

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REPORT OF THE COMMITTEE

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The Queen's Printer, Ottawa, 1969

THE STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators

Aird,	Gouin,	McGrand,
Aseltine,	Haig,	Méthot,
Beaubien ( <i>Provencher</i> ),	Hayden,	Molson,
Bourget,	Hays,	Paterson,
Burchill,	Hollett,	Pearson,
Connolly ( <i>Ottawa West</i> ),	Isnor,	Phillips ( <i>Prince</i> ),
Connolly ( <i>Halifax North</i> ),	Kickham,	Quart,
Croll,	Kinley,	Rattenbury,
Davey,	Kinnear,	Roebuck,
Desruisseaux,	Lang,	Smith ( <i>Queens-</i>
Dessureault,	Lefrançois,	<i>Shelburne</i> ),
Farris,	Leonard,	Sparrow,
Fournier ( <i>Madawaska-</i>	Macdonald ( <i>Cape Breton</i> ),	Thorvaldson,
<i>Restigouche</i> ),	McDonald,	Welch,
Gélinas,	McElman,	Willis—(43).

*Ex officio members:* Flynn and Martin.

(Quorum 9)

## ORDER OF REFERENCE

Extract from the Minutes of the Senate, Monday, December 9, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McElman, seconded by the Honourable Senator Michaud, for second reading of the Bill S-19, intituled: "An Act to amend the Navigable Waters Protection Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*

## REPORT OF THE COMMITTEE

THURSDAY, December 19th, 1968.

The Standing Committee on Transport and Communications to which was referred the Bill S-19, intituled: "An Act to amend the Navigable Waters Protection Act", has in obedience to the order of reference of December 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

GUNNAR S. THORVALDSON,  
*Chairman.*



## MINUTES OF PROCEEDINGS

THURSDAY, December 19th, 1968.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 a.m.

*Present:* The Honourable Senators Thorvaldson (*Chairman*), Connolly (*Ottawa West*), Fournier (*Madawaska-Restigouche*), Haig, Lefrançois, Leonard, McDonald, McElman, McGrand and Smith (*Queens-Shelburne*)—(10).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-19, "An Act to amend the Navigable Waters Protection Act", was read and considered.

On motion duly put, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

### DEPARTMENT OF TRANSPORT:

Jacques Fortier, Q.C., Counsel and Director of Legal Services.

J. N. Ballinger, Chief, Aids to Navigation Division.

On motion of the Honourable Senator Leonard, it was *Resolved* to report the Bill without amendment.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,  
*Clerk of the Committee.*



## THE SENATE

### THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, Thursday, December 19, 1968

The Standing Committee on Transport and Communications, to which was referred Bill S-19, to amend the Navigable Waters Protection Act, met this day at 10 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, may we have the usual motion to print?

Upon motion, it was *resolved* that verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

**The Chairman:** Honourable senators, we have as witnesses before us this morning an old friend, Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport, and also Mr. J. N. Ballinger, Chief, Aids to Navigation Division of the Department.

May we hear from Mr. Fortier?

**Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport:** Mr. Chairman, and honourable senators, Part 1 of the Navigable Waters Protection Act deals with approval required from the Minister of Transport before any work may be constructed in navigable waters. The following amendments are proposed to Part 1. The "minister" would be defined to mean the Minister of Transport. Under an Order in Council that was passed in 1966 the duties of the Minister of Public Works under Part 1 were transferred to the Minister of Transport.

**Senator Connolly** (*Ottawa West*): Under the provisions of the Financial Administration Act, I suppose?

**Mr. Fortier:** Transfer Duties Act.

**Senator Connolly** (*Ottawa West*): Transfer Duties Act.

**Mr. Fortier:** In clause 1 of the bill we would amend the definition of navigable waters for purpose of the act so as to include artificial bodies of water, such as those created by the construction of canals and dams.

**Senator Fournier** (*Madawaska-Restigouche*): May I ask a question at this point? How large does a river have to be, to be considered as a navigable water? Is a brook or river of any size considered as navigable water?

**Mr. Fortier:** The question as to whether any water is navigable is a question of fact, but as long as even pleasure craft are able to navigate we would consider that water as being navigable.

**Senator Fournier** (*Madawaska-Restigouche*): Even a canoe or a small boat?

**Mr. Fortier:** Yes, sir.

**Senator Smith** (*Queens-Shelburne*): That is, all waters?

**Senator Connolly** (*Ottawa West*): All waters that you can travel on in boats.

**Senator Fournier** (*Madawaska-Restigouche*): All right.

**Senator Smith** (*Queens-Shelburne*): This is quite an interesting point. Do you mean to say that if someone builds a sluiceway on a brook in order to run logs down in early spring, your department has control over that type of thing? Perhaps this is a problem which does not arise.

**Senator Fournier** (*Madawaska-Restigouche*): It does arise.

**Mr. J. N. Ballinger, Chief, Aids to Navigation Division, Department of Transport:** Senator, I would say, yes, this is true. The main object of the bill is to protect naviga-

tion. There are areas where people do block off waterways, small and large, and thus cut navigation off. This bill proposes to eliminate this restriction of waterways.

**Senator Smith (Queens-Shelburne):** Is this kind of problem one which arises?

**Mr. Ballinger:** An odd time.

**Senator Smith (Queens-Shelburne):** I know that when you start to define a brook you are in the same situation as when you define navigable waters. You have had some problems in the department, problems that arise out of blockage of brooks, as has been said. People will do nasty things like that. If they insist, have you any alternative except to order a company to remove their damming up of that river or small brook?

**Mr. Ballinger:** If the company wishes to build a dam that is going to obstruct the brook, under the terms of the Navigable Waters Protection Act they are required to seek approval to so. Part of the terms of the approval are that they must advertise in the local newspapers, to give people who might be affected the opportunity to make their concern known. The department has the responsibility of assessing both sides of the situation to determine whether it should be approved or not.

**Senator Smith (Queens-Shelburne):** Do you ever take any action on your own account—if someone builds an obstruction on a river—unless there has been a public complaint, if they build without a permit and block off a river which is truly navigable in the larger sense?

**Mr. Fortier:** On that question, such matters were transferred to the Department of Transport.

There is a section now in the act which provides for the minister to authorize the removal of unauthorized works. The Department of Public Works have advised me that, to their knowledge, there has been just one case where it was found necessary to proceed to the removal of unauthorized works.

**Senator Smith (Queens-Shelburne):** Then it is not appropriate subject for discussion here now.

**Senator Leonard:** I take it from this clause 1, to insert a new section 1A, that canals have not been previously considered to be navigable waters. Is that correct?

**Mr. Fortier:** Canals were not previously included in the act. We have a ruling from the Department of Justice that artificial bodies of water did not come under the act.

**Senator Leonard:** Nor canals?

**Mr. Fortier:** Nor canals.

**Senator Leonard:** Now you are bringing in canals and the artificial bodies of water?

**Mr. Fortier:** Yes.

**Senator Leonard:** There are, of course, canals that are federal public works?

**Mr. Fortier:** Yes.

**Senator Leonard:** Over which the federal Government has jurisdiction. But I presume there are also canals, or even private works, that are provincial or municipal?

**Mr. Fortier:** The reason canals were not previously included in the act is that the Department of Transport administers all canals, and under the canal regulations we have provisions which require a person who proposes to build a work in a canal to get the approval of the department. But we administer all canals, and I do not believe that actually there would be any canals which would not come under federal jurisdiction.

**Senator Leonard:** So that canals already have been under federal jurisdiction, under different legislation, but you are bringing them under the Navigable Waters Protection Act, for some particular purpose?

**Mr. Fortier:** It is because the minister now is the minister for the purposes of Part I. Previously it was the minister of Public Works. The Department of Transport was charged with the administration of canals. We retained in the department under the Minister of Transport the duty to approve of works in canals.

**Senator Leonard:** Is all jurisdiction over canals being transferred from the Department of Public Works to the Department of Transport?

**Mr. Fortier:** The Department of Transport always had jurisdiction over canals, it was always in the Department of Transport. The reason we are bringing them in now is that we are bringing now Part I under the Department of Transport.



**Senator Connolly (Ottawa West):** Arising out of Senator Leonard's question, and possibly out of that by Senator Smith (Queens-Shelburne), what about the situation where a lumber company owns a tract of land on which there is a stretch of water and it dams it up all the time; it does create a sluiceway, but it also creates a portion of water that is not navigable. Would you have jurisdiction in that case?

**Mr. Fortier:** That would come under the jurisdiction provided by Part I.

**Senator Connolly (Ottawa West):** Even when on privately owned land?

**Mr. Fortier:** Oh yes.

**Senator Smith (Queens-Shelburne):** As a supplementary question, even if that canal had been constructed at some time under another authority which existed in the province, would that apply? I will give a concrete example, so that you will see what I am getting at. Some years ago a canal was built, with the co-operation of the Province of Nova Scotia, to permit the diversion of water from a river into a main stream of the Mersey River in Nova Scotia, which is the biggest river and the source of some power at this time. This canal was also used by a newsprint company to move their pulpwood from these areas. Would you have jurisdiction over a situation like that? If someone protested, could they come to us as well as going to the provincial government?

**Mr. Fortier:** Under the British North America Act, all canals come under federal legislative jurisdiction.

**Senator Smith (Queens-Shelburne):** It does not matter who built them?

**Senator Hays:** What is new in this act that has not been under some other department? Is it just a transfer of duties?

**Mr. Fortier:** It is not just a transfer of duties. We are also amending certain existing provisions of the act, Part I and Part II. Part II was always under the jurisdiction of the Department of Transport. In connection with amendments to Part I, we are proposing quite a number of amendments.

**Senator Hays:** My next question is regarding irrigation waters. Do these come under federal jurisdiction, where you are diverting water for irrigation?

**Mr. Fortier:** I doubt it.

**Senator Connolly (Ottawa West):** Are any of them navigable, senator?

**Senator Hays:** They are large enough to be.

Where you are taking water out of a stream and where you have an allowable—I think this is under provincial jurisdiction—and your allowable is more at different times than the gross amount which comes down the stream—I am thinking of water conservation along the eastern slopes of the Rockies—whose jurisdiction is that?

**Mr. Fortier:** Artificial canals are irrigation canals, and they come under provincial jurisdiction.

**Senator Hays:** Take an amount of water which can be used from time to time for navigation. If you have an irrigation project out of a small stream and you are allowed to take some certain quantity of water, then you have a situation where you can conceivably dam all of the water. Is this under provincial jurisdiction?

**Mr. Fortier:** I know it would not come under the jurisdiction of the Department of Transport. As to whether any other federal Government department would be involved in the diversion of water from a lake or river to this artificial canal, I do not know. It may be that another department would do it.

**Senator Connolly (Ottawa West):** It is not under this act?

**Mr. Fortier:** Not under this act.

**The Chairman:** Senator Hays was referring to a big scheme of irrigation they have in Alberta, near Calgary.

**Senator Hays:** We have irrigation projects where they take all the water, if the snow does not melt in the mountains—and it is the very source of all our waters.

**Mr. Fortier:** I know that in British Columbia irrigation canals such as those you refer to are governed by provincial legislation.

**Senator Leonard:** Bow River is certainly a navigable river itself; so, at any rate, there would be jurisdiction federally over that.

**Senator Hays:** And over the mountain waters that may be used.

**Senator Leonard:** The one word "navigation" would be sufficient. I would think the federal Government would have some jurisdiction over that.

**Mr. Fortier:** Under clause 3 of the bill we are amending section 4 of the act to provide that the approval for construction of works may be given, subject to conditions, and also to provide that the approval would be void unless the work is commenced within six months and completed within three years and is constructed and maintained in accordance with the terms and conditions of the approval.

This is quite an amendment to the existing provision which just provides for a refusal of approval or an approval. We would like to so amend this section 4.

**Senator Smith (Queens-Shelburne):** What is the purpose, Mr. Fortier, for putting this in the legislation? Have you had some problems in the past where you have been given permits to do certain things and they have just lain idle for a number of years?

**Mr. Ballinger:** Yes, this is true, senator.

**Senator Smith (Queens-Shelburne):** What is the handicap of having them lie dormant for a while?

**Mr. Ballinger:** Situations can change over the years, and sometimes this causes some embarrassment.

**Senator Smith (Queens-Shelburne):** Twenty-five years can go by and then you might not want them to build.

**Mr. Ballinger:** We have one that was approved three years ago which is just starting now. The situation in the area where it is being built has changed somewhat and it is causing some embarrassment.

**Senator Smith (Queens-Shelburne):** Yes, I can understand that.

**Mr. Fortier:** The act now provides that works of a value of less than \$500 do not require approval. We are amending that provision and we would provide that the only works which are exempted would be those which in the opinion of the minister do not substantially interfere with navigation.

Section 5 of the act now provides for the minister to have authority to order the removal of a work which was not authorized. We would amend this section in order also to

authorize the minister to order that a work be not proceeded with, if it interferes substantially with navigation, and also to authorize the minister to approve a work after construction is commenced, if prior to the construction he consented to the work being commenced.

**Senator Hays:** This gets back again to my first question about irrigation. If you take water out of a river that the federal Government has jurisdiction over, does this not also interfere, then, with provincial jurisdiction in so far as the use of water out of these rivers is concerned?

**Mr. Fortier:** That is right. The diversion of water for power purposes or for irrigation canals, I am sure, does not come under any of the statutes which the Department of Transport administers, but I do believe, senator, that you are right that that would come under provincial jurisdiction.

**Senator Hays:** But would there not be a conflict, then, of interest, where you were diverting water for irrigation purposes? For instance, take many of our rivers now in Alberta; under the new spray system of irrigation they are using millions and millions of gallons of water by just putting in a pump. But this river is one that could be used for transport and that sort of thing.

**Mr. Fortier:** I doubt that it would.

**Senator Hays:** I think, for example, of India and the Ganges, where they use all of the river before it gets to the sea. The same condition exists in Japan. Thinking in terms of the future of Canada, there quite likely will be a conflict of jurisdiction.

**Mr. Fortier:** Well, canals come under the Department of Transport and no one can draw water from them without first getting a lease or a permit from the department. But anywhere else, in waters where we do not exercise any proprietary rights, I do not believe that there is any jurisdiction except provincially.

**Senator Leonard:** Excuse me, would there not be jurisdiction, if the drawing of the water from the navigable river interfered with navigation?

**Senator Hays:** Down river.

**Senator Leonard:** Yes, or if it interfered in any way with navigation.

**Mr. Fortier:** We have never exercised such a jurisdiction, senator.

**Senator Hays:** But under this new act you will then be in a position to determine how much water comes out of a river. Rivers are made by many tributaries, and I can conceivably see in the not too distant future many of these smaller creeks, and so on, that make it possible for the Saskatchewan dam to be filled, for instance, being completely eliminated of their water.

**Mr. Fortier:** Of course, this part of the act deals exclusively with construction works in navigable waters. It does not deal with the water itself, or with the amount of water that will pass through a stream or the amount of water that a person may divert from a stream. It deals exclusively with construction works in navigable waters.

**Senator Hays:** Take the example, for instance, of a small creek; I am in the process of constructing an irrigation scheme where I will be using a third of this creek—and I can see this happening all along the eastern slopes of the Rockies in the not too distant future, because we are very concerned about the amount of water we can use to take land now and increase its productivity from 700 to 1,000 per cent by spray irrigating it. But in each instance we have to construct works on these creeks or rivers, and it is being done.

**Senator Connolly (Ottawa West):** Are these creeks or rivers now navigable, senator, before you construct anything on them?

**Senator Hays:** Maybe not at that particular point, but down river they are, and the amount of water you may take out at the top might interfere with the navigability.

**Senator Leonard:** At some point further down.

**Senator Hays:** At some point further down, yes. There is no doubt about that.

**Senator Connolly (Ottawa West):** The downstream rights, then, may be affected by what you do upstream.

**Senator Hays:** It seems to me that water is one of the big problems in Canada today. In the future, if we have 100 million people in Canada, I just wonder how much water there will be coming from the Arctic and so on. What we are doing now, and the chairman knows this, in so far as irrigation is concerned—the minute you put the Saskatche-

wan dam in you open up a whole new area in the Palliser triangle, consisting of hundreds and hundreds of square miles.

**Senator Connolly (Ottawa West):** Just talking about the Saskatchewan dam, once it was in and the lake behind it was created and was filled, then did the overspill actually affect the flow of the quantity of water on the lower part of the river, the downstream part?

**Senator Hays:** Well, conceivably, there could be enough water used that it would never fill, if there was a series of dams put along the eastern slopes of the Rockies, which there should be, and these would be maintained for irrigation. But I can see a great conflict between jurisdictions between federal Government and the provinces of the future in so far as water is concerned.

**Mr. Fortier:** Of course, the right to divert the water from a river, from a lake, from a stream, for irrigation purposes or for power purposes—well, the party proposing to do such diversion would have to go to the province. There may be some other federal Government department that would be involved that would have jurisdiction, but I am sure the Department of Transport has none. We are simply concerned with navigation, but it does not extend to exercising any control over water diversions. If it is a canal, we would exercise jurisdiction because canals are our property. If it is within a public harbour the same would apply because public harbours are federal property. Elsewhere, for instance, down the St. Lawrence except for Montreal, Sorel, Quebec and Trois-Rivières, the bed of the river is vested in the province and the water rights are controlled by the province.

**Senator Hays:** There is no conflict so far as this bill is concerned? I am thinking of the situation of anyone making an application and the province saying "Well, you are using so much water you will do harm to downstream navigation." It does happen at times. And I wonder how many people do we have to write to for permits. This would apply to the use of power as well.

**The Chairman:** Mr. Fortier, I suppose it is important for this committee in considering this bill to recall the words of the British North America Act in regard to the subject matter, and I think it is contained in section 91 under the heading merely "Navigable Waters".



**Mr. Fortier:** Under the schedule to the British North America Act they say that canals and the waters connected with canals are the property of the federal Government, and this also applies to public harbours. But there is no other item in respect of water which is vested in the federal Government.

**Senator Smith (Queens-Shelburne):** Is that true of all the provinces? Are there no exceptions? I am wondering about the background of that statement. I am thinking, for example, of Nova Scotia, my own province, where I am sure it has been the case for many years that if somebody wanted to erect a dam or put up a mill—and this happened years ago more than it does today—they had to acquire water rights from some authority in the province which would permit them to put up a sawmill on that particular river or to build a dam to hold their logs back, and so on. As a matter of fact when this power development to which I made reference a while ago was built 40 years ago, the Nova Scotia Power Commission had to re-acquire those old rights of some of the old mills in that area for the province itself to get control so as to be able to remove all that stuff.

Now, should we have come to the federal Government in the first place? There may be a difference in the history of the thing in that there may be some rights that other provinces did not acquire and this may be a circumstance applying only to the old provinces.

**Mr. Fortier:** There is one thing: if a party proposes to put a power dam or a mill with a dam across a navigable water, they would need approval of the Minister of Transport. And I would imagine they would have to go to the province for permission to draw water for power purposes or for mill purposes.

**Senator Hays:** Do you mean the federal Transport people would have to go to the province or the applicant?

**The Chairman:** I think you are referring to the user in that situation, or the intended user.

**Mr. Fortier:** The intended user.

**Senator Smith (Queens-Shelburne):** In the case of some of these rights we are referring to we are going back to the early settlers over 200 years ago. They acquired these rights in one fashion or another, and they were referred to as water rights, and they built

these mills and successive owners of the property still retain some water rights which are of some value too.

**Senator Hays:** In our part of the country it is quite easy for a farmer to spend \$50,000 today on an irrigation program, and we have always been led to believe that if you use water for seven years consecutively you have acquired a water right and nobody can take it away from you. If this is not so and if the federal Government have jurisdiction, it would be nice to know this before you start spending this amount of money. I have an irrigation scheme on my own place which we run probably every year so that we are continually running water to preserve that right.

**Senator Connolly (Ottawa West):** I wonder if this would confuse the issue; I suppose when you refer to the quantity of water that is to be diverted by an irrigation project or for some other purpose and it is only going to affect the province because it is one of the natural resources over which the province has an element of control—now, you say that out of one side of your mouth, but on the other side if you say that by creating the work you either destroy the navigable stream or create a navigable stream, then perhaps this authority comes into play. I think there you have a situation which gives rise to the possibility of conflict. Is that right?

**Mr. Ballinger:** I do not know whether or not this might be helpful, but I think the federal Government has exclusive rights of control of navigation in Canada and the use of water for navigation purposes.

**Senator Connolly (Ottawa West):** If navigation is affected in one way or another or if it is created in any way, the authority of the federal Government immediately enters the picture.

**Mr. Ballinger:** This is correct.

**Senator Hays:** So that there is a conflict.

**Mr. Ballinger:** Yes. It must be recognized to some extent.

**Senator Leonard:** So long as navigation is not interfered with, water is under the control of the province.

**Mr. Fortier:** In so far as the use of the water would interfere with navigation. So far as the Department of Transport is concerned I am sure we do not administer any statute



that would deal with that situation. Maybe there is a government department or other federal statutes that would deal with the use of water. But in the Department of Transport we don't know about it.

**Senator Fournier (Madawaska-Restigouche):** What is the situation so far as international waters are concerned?

**Mr. Fortier:** That is a matter that comes under international agreement. There was a new treaty of 1909 creating an International Joint Commission which controls international waters and also certain tributaries to the St. Lawrence.

**Senator Smith (Queens-Shelburne):** Mr. Chairman, may I ask another question? It seems to me that when the department concerned with this general matter was the Department of Public Works, they also had the authority and the power to grant the use of a navigable water, particularly with reference to that area extending from the low water mark out some reasonable distance; and they also had the authority and did have the practice of leasing the right for a man to put a fish plant or pier or privately owned wharf out over and beyond the low water mark. Is the Department of Transport now concerned with that leasing arrangement which has gone on in the past?

**Mr. Fortier:** We have always controlled the construction of works such as you have referred to in public harbours, because the beds of public harbours are federal property and the Department of Transport administers public harbours. It is the same with canals. The beds of the canals—the Rideau Canal, the Trent Canal, and the others—are federal property and, again, there we would control the erection or the construction of any work on the bed. The bed includes up to high water mark. Elsewhere it would likely be provincial property.

**Senator Smith (Queens-Shelburne):** The next point is not quite clear to me yet. Am I wrong when I say the Department of Public Works did administer in this area until just recently?

**Mr. Fortier:** The Department of Public Works is charged with the administration of certain property like government wharves. Then they acquire the site where they build the wharves. They do control the right of persons to put up structures on those sites

adjoining or close to wharves they have built. That is still retained in Public Works.

**Senator Smith (Queens-Shelburne):** But Public Works never dealt in this area with which we are dealing this morning? I thought this kind of thing came over to the Department of Transport in—when was it?

**Mr. Fortier:** 1966.

**Senator Smith (Queens-Shelburne):** Yes, 1966.

**Mr. Fortier:** This is only Part 1 that came to us in 1966, but we have always had the administration of the beds of public harbours and of canals.

**Senator Smith (Queens-Shelburne):** Maybe somebody who applied for some rights to do certain work had to go to both departments then.

**Mr. Fortier:** Maybe.

**Senator Smith (Queens-Shelburne):** It was always a little confusing and, as I recall certain specific cases they took a long time. These are all Nova Scotia references. It also involved opinions from Justice as to what the rights of the province were, and in one particular case somebody who talked to me about it had to get clearance from the province in order to do these things. It was because of that I was wondering what confusion there was with regard to historical rights, which did not exist in British Columbia, for example.

**Senator Connolly (Ottawa West):** From a practical point of view, Mr. Chairman, I think the transfer to the Department of Transport is a very wise move, because I remember cases where I was involved myself in situations where you had to get a permit under the Navigable Waters Protection Act and were running between the Department of Public Works and the Department of Transport. Now it will all be in the one place. I think this is sensible.

**The Chairman:** May we ask Mr. Fortier to continue with his submission, honourable senators?

**Hon. senators:** Agreed.

**The Chairman:** Anything that has been covered by our discussions, Mr. Fortier, you can use your own discretion on.

**Mr. Fortier:** Thank you, Mr. Chairman, I will.

Under clause 5 of the bill, we would provide, if as a result of passage of time and changing conditions a work interferes with navigation, that the building, repair or alteration of the work would be treated as a new construction. The approval given under Part 1 would be for a limited time only, but it would be subject to renewal.

**Senator Connolly (Ottawa West):** What subsection is that?

**Mr. Fortier:** That is section 8 of the act.

**Senator Connolly (Ottawa West):** In that case there is no compensation payable? If, for example, approval were given to build a bridge over what is considered to be a navigable water, and due to changing conditions the construction interferes with navigation, in the opinion of the courts, this would be at the expense of the owner of the bridge or wharf, without compensation?

**Mr. Ballinger:** Yes, that is if, in the opinion of the owner, it had to be rebuilt or repaired.

**Senator Connolly (Ottawa West):** If in the opinion of the owner?

**Mr. Ballinger:** Yes, if in the opinion of the owner.

**Senator Connolly (Ottawa West):** What about the case where the department said that as a result of changing conditions the construction does now interfere with navigation, after having given approval in the first instance? Does it not apply both to the department and the owner? The owner might want to change it and build a bigger wharf. I can understand there he would have to have approval before he did it. But suppose, for the sake of argument, there was a change in the water situation just there, that the department felt interfered with navigation, could you then require the owner to change his structure?

**Mr. Ballinger:** The proposed amendments allow for a structure to be approved for a given length of time. Normally a bridge is designed with a life expectancy of 70 years. The approval will probably be for 70 years for that bridge, so if at the end of 70 years the owner was thinking about doing some repairs or making changes to that bridge, he

would then have to seek a new approval. As far as the owner is concerned, the bridge has now been paid for and it has been written off.

**Senator Connolly (Ottawa West):** What about a situation where you say that a bridge which was authorized for a 70-year period now interferes with navigation?

**Mr. Fortier:** Before the life expectancy of the bridge has expired?

**Senator Connolly (Ottawa West):** Yes.

**Mr. Fortier:** This just deals with the approval and does not deal with the question of liability. That would be a question to be decided according to the law of the place, as to whether as a result of an order given by the minister to remove the work the owner is entitled to compensation.

**Senator Hays:** Do you have a list of navigable waters?

**Mr. Fortier:** No, senator, we do not have.

**Senator Hays:** In reply to the first question that was asked you said that any water that even a canoe goes on would come under this particular act. So a river where they divert water for pleasure purposes and we have canoes on, and that sort of thing, does that make it navigable?

**Mr. Fortier:** That would be considered to be navigable, even if capable of just small-craft navigation.

**Senator Fournier (Madawaska-Restigouche):** Even for an old raft for the kids to play with?

**Senator Hays:** Then all waters are navigable. If I make a slough and put a little boat on it, it then comes under your jurisdiction. It is navigable water?

**Senator Fournier (Madawaska-Restigouche):** That is so.

**Mr. Ballinger:** It could be so.

**Senator Hays:** I am quite concerned about these jurisdictions.

**The Chairman:** It is a difficult problem Senator Hays. Take, for instance, the south end of Lake Winnipeg. We have hundreds of square miles of marshes. In one season the water may be four or five feet deep, and then in low water two or three years later the ground may be showing, but it is still a navigable water. That is one of the problems we have.

**Senator Hays:** And if someone is taking out water for irrigation purposes you can report them to the Department of Transport under this act, and say that those people are interfering with your right to use a navigable stream, and they must be prohibited from taking water out of there.

**The Chairman:** Honourable senators, we are under a time limit this morning because this room is required for another purpose at 11 o'clock.

**Mr. Fortier:** Clause 7 of the bill authorizes the Governor in Council to make regulations prescribing fees for any approval given under Part I.

Those are the amendments to Part I of the act. We come now to Part II which deals with the removal of wrecked vessels from navigable waters.

Clause 9 of the bill contains a new provision, which provides for the removal by the department, and the recovery of the costs thereof, of vessels which are not sunk but which are abandoned, anchored or moored, in a navigable water.

**Senator Connolly (Ottawa West):** To what clause of the bill are you referring now, Mr. Fortier?

**The Chairman:** It is on page 5, Senator Connolly, the new section 16A.

**Senator Connolly (Ottawa West):** Are you thinking of the vessel that has been lying outside of Kingston for a while? What is the name of that vessel?

**Mr. Ballinger:** The *Incharran*.

**Senator Smith (Queens-Shelburne):** That is an awful end for a noble ship. Senator Connolly (Ottawa West), being an old navy man, must be very distressed.

**Senator Connolly (Ottawa West):** The ship was bought by a private owner, and the navy has no further responsibility for it.

**Mr. Fortier:** Under clause 10 of the bill sections 18 and 19 of the act are repealed, and new sections 18 and 19 are substituted. At present the prohibition is only against the owners or tenants of sawmills from dumping rubbish in navigable waters, and we want to make the section applicable to anyone—to the owners of companies.

**Senator Smith (Queens-Shelburne):** Mr. Fortier, are you saying that up to now we had no control over the dumping of rubbish from a pulp mill?

**Mr. Fortier:** It was doubtful because the section named only the owners of some mills, and did not mention anyone else.

**Senator Smith (Queens-Shelburne):** We seem to have regulations in respect of the operation of a...

**Mr. Fortier:** The section is quite old, and it may be that it was enacted at a time when there were no pulp mills.

**Senator Smith (Queens-Shelburne):** How is it that over the years we have been able to insist that the pulp and paper industry should barge its rubbish out to beyond the mouth of the harbour and dump it there? What authority was there for insisting upon that? Perhaps that is provided for in the Fisheries Act.

**Mr. Ballinger:** Yes, it may be that the Fisheries Act has something in it to that effect.

**Senator Smith (Queens-Shelburne):** I know that some of these industries in stormy weather do not go out beyond the mouth of the harbour. The fishermen are the ones who complain about this, because this rubbish destroys the lobster grounds. I know that there have been discussions between the company and the Department of Transport, because the local harbour master has been involved in them.

**Mr. Fortier:** We would extend the act to prohibit the dumping of material and rubbish of any kind in navigable waters where the depth is not less than 20 fathoms.

**Senator Smith (Queens-Shelburne):** You had better explain to the landlubbers here how much water that is.

**Mr. Fortier:** A fathom is six feet.

**Senator Smith (Queens-Shelburne):** So it means 120 feet of water, which is pretty deep water.

**The Chairman:** It is a good thing that we have present some gentlemen from the Maritimes.

**Senator Smith (Queens-Shelburne):** Yes, born on the sea.

**Senator Hays:** I should like to give you an example of what some of our people do. If a



cow dies they wait until she is good and wormy, and then throw her into a little lagoon that they make. They have to have a boat, and now they will be writing to you asking you to remove the cow because the water is a navigable water.

**Senator Smith (Queens-Shelburne):** This may not be very interesting or important, but it strikes me that this refers to the depth under which you will not permit the dumping of rubbish. What was the depth specified in the old legislation?

**Mr. Ballinger:** In the old legislation it was eight fathoms in fresh water, and twelve fathoms in tidal water. It has been increased to 20 fathoms having regard to these large supertankers which draw at least 80 feet, and some of the new ones that are now in operation are drawing 110 or 115 feet.

**Senator Smith (Queens-Shelburne):** I am wondering what effect these requirements will have on the economics of getting rid of rubbish. Barge-loads of rubbish go out every day from the newsprint company in the harbour I am thinking of, and when you raise that figure to 120 feet you are getting into very deep water.

**The Chairman:** Honourable senators, I must point out that it is early 11 o'clock, at which time we have to give up this room. Is it your wish to meet again at 2 o'clock?

**Senator Smith (Queens-Shelburne):** No, let us complete our deliberations.

**Mr. Fortier:** Mr. Chairman, the remainder of the amendments are minor, and they are consequential on the previous amendments. Amongst them are amendments that increase the penalties for violations of the various provisions.

**Senator Fournier (Madawaska-Restigouche):** Who collects the money?

**Mr. Fortier:** The Crown.

**Senator McElman:** Mr. Chairman, may I ask for the record why there is no prohibition in this bill against so-called deadheads in navigable waters. I am referring to the results of log driving and pulpwood operations

which constitute a serious danger to navigation. Many lives are lost each year because of deadheads in the water.

**Senator Connolly (Ottawa West):** Would not the new section 18 cover that? It reads:

No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any sawdust, edgings, slabs, bark or like rubbish of any description whatsoever that is liable to interfere with navigation in any water, any part of which is navigable or that flows into any navigable water.

Would not that cover a deadhead?

**Mr. Fortier:** It would.

**Senator McElman:** But, a deadhead is not disposed of. This section refers to the refuse of a commercial or industrial operation.

**Senator Connolly (Ottawa West):** Yes, but I am wondering whether the witness would say that. You see, a deadhead is something that is put into the water for some reason, after which it becomes a deadhead. This section provides that no person shall throw or deposit, or cause, and so on, edgings, slabs, or like rubbish of any description, that is liable to interfere with navigation. I think a deadhead would probably come under that class of clause.

**Senator McElman:** I think we can get an answer to this here. It is not a deadhead when it is put in the water. There is quite a difference. Why is it left to provincial jurisdiction? I should like to get this on the record.

**Mr. Ballinger:** I think about the only thing I can say is that if you included floating logs in this act it would be impossible to administer it, because it is such a widespread problem in the country.

**Senator McElman:** You feel this is best left to provincial jurisdiction?

**Mr. Ballinger:** At the present moment, yes.

**Senator McElman:** It has had serious consideration in the department, I take it?



**Mr. Ballinger:** It has had very serious consideration, not only in the Department of Transport but also in the Department of Public Works when they had this problem to contend with.

**Senator McElman:** Thank you. I have it for the record and now I can deal with the provincial authority.

**The Chairman:** Mr. Fortier says he has concluded his submission. Are there any further questions before we report the bill? Do you want to take the bill clause by clause?

**Hon. Senators:** No.

**The Chairman:** Shall I report the bill without amendment?

**Hon. Senators:** Agreed.

The committee adjourned.











First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

# TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 6

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*First Proceedings on Bill S-23,*

intituled:

An Act to amend the Canada Shipping Act.

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THURSDAY, FEBRUARY 27, 1969

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## WITNESSES:

*Department of Transport:* Jacques Fortier, Q.C., Counsel and Director of Legal Services. R. R. MacGillivray, Director, Marine Regulations Branch. *Canadian Chamber of Shipping:* Jean Brisset, Q.C., counsel; Peter N. Miller, insurance executive. *Canadian Maritime Law Association:* A. Stuart Hyndman, Chairman. *Dominion Marine Association:* P. R. Hurcomb, General Manager. *Canadian Merchant Service Guild:* Robert F. Cook, President.

THE QUEEN'S PRINTER, OTTAWA, 1969

SENATE COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

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Denis	Macdonald ( <i>Cape Breton</i> )	Smith ( <i>Queens-Shelburne</i> )
*Flynn	*Martin	Sparrow
Fournier ( <i>Madawaska-</i> <i>Restigouche</i> )	McElman	Thorvaldson
Gladstone	McGrand	Welch—(30)
Hayden	Michaud	

\*Ex Officio member

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intituled: An Act to amend the Canada Shipping Act.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

Thursday, February 27, 1969.

Pursuant to adjournment and notice the Senate Committee on Transport and Communications met this day at 10:00 a.m.

*Present:* The Honourable Senators Thorvaldson (*Chairman*), Blois, Connolly, (*Halifax North*), Flynn, Gladstone, Isnor, Kinley, Kinnear, Langlois, Lefrançois, Macdonald (*Cape Breton*), McElman, Pearson, Petten, Rattenbury, Smith (*Queens-Shelburne*), and Sparrow.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-23, "An Act to amend the Canada Shipping Act", was considered.

On motion of the Honourable Senator Blois, it was ordered that 800 English and 300 French copies of these proceedings be printed.

The following witnesses were heard:

*Department of Transport:* Jacques Fortier, Q.C., Counsel & Director of Legal Services.

R. R. MacGillivray, Director, Marine Regulations Branch.

*Canadian Chamber of Shipping:* Jean Brisset, Q.C., counsel.

Peter N. Miller, insurance executive.

*Canadian Maritime Law Association:* A. Stuart Hyndman, Chairman.

*Dominion Marine Association:* P. R. Hurcomb, General Manager.

*Canadian Merchant Service Guild:* Robert F. Cook, President.

The following documents were ordered to be printed as appendices:

A. Statement by Peter N. Miller.

B. Statement by John C. J. Shearer.

C. Statement by Jean Brisset, Q.C.

D. Letter from The Shipping Federation of Canada to the Minister of Transport.

At 12:45 p.m. the Committee adjourned until Thursday next, March 6, 1969, at 10:00 a.m.

ATTEST:

John A. Hinds,  
Assistant Chief,  
Committees Branch.



## THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

### EVIDENCE

Thursday, February 27, 1969.

The Senate Committee on Transport and Communications, to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 10 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson** (*Chairman*) in the chair.

**The Chairman:** Honourable senators, I call this meeting to order. We are here to consider Bill S-23, and to amend the Canada Shipping Act.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings on the said bill and that 800 copies in English and 300 copies in French be printed.

**The Chairman:** Honourable senators, we will proceed with a brief statement from Mr. Jacques Fortier, counsel for the Department of Transport.

**Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport:** Mr. Chairman, honourable senators: Bill S-23, to amend the Canada Shipping Act, contains amendments which may be considered to be of a substantial nature and others which are minor ones.

If we take, first, the amendments which are of a substantial nature, they are the following:

Clause 1 of the bill contains a definition of air cushion vehicles, hovercraft; and clause 27 makes certain provisions of the Canada Shipping Act applicable to air cushion vehicles. Hovercraft were considered to be aircraft and, thus, were subject to the Aeronautics Act. However, recently the Aeronautics Act has been amended to delete hovercraft from the application of the act.

Clause 7 of this bill is a temporary measure which is necessary following the report of the Royal Commission on Pilotage which expressed doubt as to the validity of certain pilotage by-laws made under the Shipping Act. The provision of clause 7 will confirm the validity of these pilotage by-laws and of the pilotage licenses issued under the by-laws, only until such time as the department is prepared to bring down legislation to implement the report of the royal commission. Clause 7 also contains saving provisions in respect of

any pending court actions in which the validity of these pilotage by-laws or pilotage licenses are in issue.

Clause 23 of the bill also would authorize the Governor in Council to make regulations for the prevention of the pollution of Canadian waters by chemicals, garbage, sewage and other substances from ships.

Clause 24 would authorize the Minister of Transport to cause the removal, sale, or destruction of vessels wrecked or abandoned whose cargo or fuel is likely to pollute Canadian waters, or to be a danger to marine life, or to damage coastal property. This clause would also authorize the Minister of Transport to recover the cost of such removal, sale, or destruction from the owner of the vessel, or from the person responsible for the wrecking or abandoning of the vessel.

In connection with Clause 24 I would like to point out that under the Navigable Waters Protection Act the minister is authorized to remove and destroy vessels, and cargoes, which cause obstruction to navigation. Clause 24 authorizes the removal of vessels which do not cause obstruction to navigation, but whose cargoes are likely to cause damage.

The other amendments contained in the bill which may be considered to be of a minor nature are the following:

Clause 1 includes a definition of load lines. This definition is necessary for the purpose of another clause in the bill which provides for the implementation of the Load Line Convention of 1966.

Clauses 3 and 4 provide that certificates of competency as masters and mates granted to landed immigrants are no longer valid after they cease to be landed immigrants otherwise than by achieving Canadian citizenship, and it would also permit landed immigrants to receive certificates of competency as masters, mates, and engineers after passing an examination.

Clauses 5 and 6 repeal certain sections of the act which relate to seamen, and which date back to the days of sailing ships. They are provisions for the protection of seamen and they are not longer applicable.

**Senator Pearson:** Do you mean that the seamen have no need for protection any more?

**Mr. Fortier:** They have plenty of protection, but these were special provisions for the prevention of imposition on seamen while they were in port. They have not been invoked for years.

**Senator Smith:** I suggest to the senator that he read these provisions in the act. They are very interesting. They remind me of the history of Nova Scotia.

**Mr. Fortier:** Clause 10 amends the provisions of the act in respect of radio installation on ships in order to impose on ship operators the requirement to comply with new regulations that the department will be making.

Clause 12 would prescribe which ships are to be fitted with radio telegraph and radio telephone installations while in Canadian waters, and also with very high frequency radio telephone installations where the Department of Transport operates a marine traffic control system.

Clause 25 would give persons investigating accidents on ships the same powers as investigators of shipping casualties, being to summon witnesses, administer oaths, go on board ships and require the production of documents.

Clause 26 would provide for the making of regulations respecting reports of shipping casualties and accidents and deaths on ships.

These are the amendments.

**The Chairman:** Thank you, Mr. Fortier. Honourable senators, we have with us this morning representatives of various Canadian organizations associated with the shipping industry who desire to be heard on this bill. I should like to put on the record the organizations represented here and the names of some of the individuals who will be appearing before us. I will just say now that we may want to question Mr. Fortier at some time during the meeting, but with your agreement I should like to present these other people to the committee first, then we can hear again from Mr. Fortier if we want to question him later.

These are the organizations and the persons appearing here. For the Canadian Chamber of Shipping we have Mr. Jean Brisset of Montreal, Legal Adviser to the Chamber. Also we have Mr. Peter N. Miller, an insurance executive from London, England, who has come to Canada specifically to appear before this committee concerning clause 24, relating to pollution. For the Canadian Merchant Service Guild we have Mr. Robert F. Cook, the President of that organization. For the Dominion Marine Association we have Mr. P. R. Hurcomb the General Manager. We also have Mr. Stuart Hyndman, Chairman of the Canadian Maritime Law Association. There is also here Mr. Macgillivray, the Director of the Marine Regulations Branch, who is here with Mr. Fortier. There may

be some others here who will also appear before us as we go on.

With your permission, I will now ask Mr. Miller from London, England, to appear before us.

**Mr. Peter N. Miller, Insurance Executive, London, England:** Mr. Chairman, honourable senators, first of all I must thank you for allowing me, a foreigner, to appear before this Senate committee.

**The Chairman:** We do not consider you a foreigner.

**Mr. Miller:** That is very kind, sir. I would like, if I may, briefly to say who I am, then hand in two statements for the record, and briefly run through those statements to try to summarize them for you.

I should at once apologize for the absence of a colleague of mine who was due to come as well, Mr. Shearer, who unfortunately could not make the revised date of the meeting.

You may well ask why it is that two rather than one so-called, but certainly not self-styled, insurance experts should wish to appear in front of you. This, Mr. Chairman, is because in the market of the insurance of shipowners' liabilities there are two main parties, two main parts of the market who provide the necessary cover and it is therefore, sir, as an insurance man and an insurance man only that I wish to address myself to certain sections of the bill which you are examining and notably section 24.

**The Chairman:** There are copies of the brief available. The briefs will appear in the record in their entirety. Is that agreed?

**Hon. Senators:** Agreed.

(See Appendixes "A" and "B")

**Mr. Miller:** Mr. Chairman and honourable senators Mr. Shearer, my colleague, for whom I speak today and from whom I have full authority so to do is partner in a firm called Thos. R. Miller and Sons (Insurance) Limited, who manage two firms actually called the United Kingdom Mutual Steamship Assurance Association. There is one firm in London and another in Bermuda.

In addition to this association, we represent several other such associations in London who together are known as the London Group.

In addition to this group we represent the Scandinavian Protection and Indemnity Association in Norway and Sweden.

Now, Mr. Chairman, sir, these associations insure shipowners of many nationalities who own together about 140 million gross registered tons of shipping which is approximately 70 per cent of the whole world's tonnage and about 80 per cent of the firm



world tonnage, so it is, as the major insurers of shipowners' liabilities that we are speaking today.

A brief summarization of what these associations cover would be liability for loss of life and personal injury. They cover a shipowner's liability for damage to cargo and they cover a shipowner's liability to third parties for property damage. They also cover the shipowner's liability for removal of wrecks and *inter alia* and liability for oil pollution.

Attached, sir, to the statement we have handed into the record is a list of all the pollution claims that this very large group has had over the last—between the years 1960 to 1966. I must say at this point that until the case of the *Torrey Canyon* oil pollution, it was a very small part of the whole range of a shipowner's liability. It was not by way of casualty experience, which was an important part. *Torrey Canyon* may have changed all of that, but it was the first and so far the only large case of this kind. Sir, the basis upon which all such insurance is granted to a shipowner is based upon two elements in international maritime law, namely, that fault is the basis of liability and that a shipowner has the right to limit his liability in the absence of privity to a reasonable figure. Now, it is the breach of these two principles in section 24 which make the section, as far as we are concerned, as insurers, something very difficult and indeed I must say impossible as such to insure. Please accept that we as insurers, as commercial men, would not dream of telling you as legislators what you should or should not do. All we are saying is that it is, as it stands, not insurable.

This was a point that we both made to the United States house of representatives in committee a year ago and they accepted what we have to say. I hope that I can put enough evidence in front of you for you too sir and your committee to accept this or not.

Perhaps now I should explain how the group to which I have referred fits in with the rest of the insurance market. The group itself takes a very large proportion of any risk, of any one casualty. But, like any insurer, it protects itself by re-insurance—which is where my particular firm comes in, because it has been my personal duty for many years to arrange the necessary re-insurance of this group.

Each year, we receive instructions to place the maximum amount of re-insurance for shipowners' liabilities, in any market of the world. We are not given a limit: we are told to do the maximum that can be done. We then, for two to three months in every year—for the contract is an annual contract, as most such contracts are—negotiate with all the markets in the world to obtain maximum coverage possible. It is for this reason, sir, that I can say to you with absolute certainty that there is no other market to which we can turn to insure the additional liability which section 24, as it stands, imposes upon the shipowner.

Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between \$10 to \$15 million—somewhere in that region—but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability.

It is possible that subsidiaries of major oil companies might be prepared to take the risk in excess of that—though frankly I doubt it—but what is certain is that no independent borrower could possibly accept such additional liability, however remote it may be; and it would be very very difficult for such an owner to trade to your country and, if he did, he would be partially uninsured. If I may repeat—the two points which matter in liability insurance of this kind are that legal liabilities are based on the concept of fault and that the shipowner can limit his liability to a reasonable amount. One can, of course, give an example of unfairness of absolute liability as proposed in the bill. Your ship may properly be at anchor and another ship may collide with it and cause damage. As your bill stands, a person who has acted properly, bears the blame.

So far we have criticized the bill, but I, as an insurer and not somebody who is trying to teach a legislator his job, would like to propose to you, sir, what can be done commercially. Then it is up to you as the legislators to decide what must be done by way of legislation.

In parentheses here, sir, I may say that we regard it as of very great importance that anything you do should be the subject of consultation between yourselves and the United States of America for the very obvious reason of the number of waterways which you share. As you may know, Mr. Shearer and I have given evidence in front of two Congressional committees on this subject. Next Wednesday I am going to give further evidence in front of another committee in Washington on the same subject.

Now, sir, to the proposals which we can put forward to you, you may know that after the *Torrey Canyon* incident the British Government was in, let us put it, an uproar, because of this very grave casualty, but they decided that they would not take unilateral steps in terms of legislation but that they would rather work through the fields of the International Maritime Consultative Organization and the CMI, or Comité Maritime International, about which you will hear more later.

They decided to work through these two traditional channels in order to try to get international agreement as to the sort of legislation which all

countries could agree on as fair and reasonable. It is too early yet to say what suggestions these organizations will make, but recommendations have already been made and, if I may quickly summarize these recommendations, I shall then be able to say that our group can support these recommendations.

Firstly, in place of strict or absolute liability, a reversal of the burden of proof is suggested. That means that the shipowner is always liable for pollution damage caused by oil or other cargo, unless he can affirmatively prove that it was caused without his fault. Secondly, the proposal is for an increase in the limit of liability within the structure of the 1957 Brussels Convention. Thirdly, the recognition of the right of governments to recover the cost of protective measures to prevent or minimize effects of pollution following a spillage as well as clean-up costs. I am talking here chiefly of oil pollution, which is the gravest danger, but your bill does, in my opinion, quite rightly cover other possible pollutions by other possible cargoes.

These recommendations I have just outlined would necessitate substantial changes in the present system of international law, but the protection and indemnity associations and the world markets for whom I speak can support these proposals and we would hope that you might consider, sir, deferring your own legislation until it is known definitely what these internationally-agreed recommendations are.

The associations for whom I speak accept these recommendations because they in turn accept that, as the law stands, the position of governments in regard to oil pollution is simply not satisfactory. At the moment, it is open to grave doubt whether you, as a Government, have the right to recover the costs of cleaning up pollution caused by a ship. We do not know what the English law is. We shall after the *Torrey Canyon* cases are resolved. But the insurance aspects of any legislation are these: Here is a risk which up to now has been a minor one. I will go farther than that: Here is a risk which up to now may not have existed at all, in that a shipowner may not have been liable for this risk. Any legislation that is now passed is going to impose a higher burden upon the shipowner, and the shipowner must turn to his insurers to cover him for that liability. But, as an insurer, sir, I feel sure you will appreciate that it is not my business to refuse a risk when it is offered. Somebody passes legislation; as a result, a shipowner has an additional liability. I am an underwriter, in fact, an underwriter of Lloyds, and it is my business to accept such a risk. What I am saying here today is that with the very best will in the world I cannot accept any more risk beyond certain figures than I have already got. Now there are several reasons for this; you will realize that in any marine casualty there are many elements involved. There is the ship herself; I as an insurer am expected to cover that. There is the cargo; I as an insurer am expected to cover that; and then

there are the other liabilities which I as an insurer am expected to cover, for example, loss of life, personal injury, and removal of wreck, all heavy liabilities which must be insured.

Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability. From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself—an additional liability of between \$10 million to \$15 million or somewhere between \$71 and \$100 per gross ton.

It is not that we do not want to insure it. It is simply that we cannot beyond a certain figure.

**The Chairman:** When you refer to \$10 million to \$15 million, that would be for one unit, or one ship, or what does it cover?

**Mr. Miller:** That is a very good point which I should have made more clear. When I say \$10 million it applies to each accident, each vessel, which is a most important consideration in a collision. Because we have developed the limitation, it is a most important consideration from the point of view of the underwriter. You will realize that he may have such a claim 20 times during the year.

I do not think I have very much more to say but will be very pleased to answer any questions which you or any other honourable senator may wish to ask.

Finally, I would like to thank you again for allowing me to give evidence to your committee.

**The Chairman:** Thank you, Mr. Miller. Are there any questions?

**Senator Flynn:** Mr. Chairman, are other representations going to be made on the same point by others who are present here?

**The Chairman:** Yes, there are. Mr. Brisset will be appearing. He is the next witness on the same subject.

**Senator Flynn:** I was wondering whether it would not be a good idea to hear him and then to ask the questions.

**The Chairman:** I am in your hands on that honourable senators. Is that agreeable honourable senators?

**Hon. Senators:** Agreed.



**The Chairman:** Thank you very much, Mr. Miller. We may want you back again. In the meantime I will call on Mr. Brisset. Honourable senators, I referred to Mr. Brisset a moment ago as a member of a Montreal legal firm and he is Legal Adviser to the Canadian Chamber of Shipping. Mr. Brisset has a brief to present and he brought some copies with him which are now being distributed to members of the committee.

Mr. Brisset, you can do whichever you like; you can add your submission or you can summarize it.

May I have agreement that in any event Mr. Brisset's oral submissions will be printed in the record?

**Hon. Senators:** Agreed.

(See Appendix "C").

**Mr. Jean Brisset, Q.C. Counsel, Canadian Chamber of Shipping:** Mr. Chairman, honourable senators: As your chairman has pointed out, I appear before you on behalf of the Canadian Chamber of Shipping, but I could also point out that I appear on behalf of the International Chamber of Shipping, and on behalf of all these interests I want to thank you for the opportunity given me to appear before you and to comment on this particular clause of Bill S-23, namely, clause 24.

First of all, I should say what the International Chamber of Shipping is. It is an organization which is comprised of the national Shipowners Associations of many countries, and the list of these countries is included in an appendix to the brief, which will have been distributed to you. It includes Canada, and one of the constituent members of that association is the Canadian Chamber of Shipping. The Canadian Chamber of Shipping also has a number of constituent members, and I represent here particularly the following: The Shipping Federation of Canada; The Canadian Shipowners Association; the Chamber of Shipping of British Columbia; and The British Columbia Towboat Owners' Association. These associations have a particular interest in the subject which we will be discussing today.

I might describe briefly what the Shipping Federation of Canada is. It is an association of owners and operators of vessels from eastern Canada—that is, the St. Lawrence and eastern Canadian ports. The British Columbia Chamber of Shipping is a similar association on the west coast. I should point out to you that these associations represent, I would say, the great majority of ships and ship owners that carry Canadian overseas trade, both import and export. The first suggestion which these associations want to put before you is at consideration be given to deferring the enactment of section 24, principally because the object of this legislation should, we respectfully submit, be covered by an international convention—that is, agreement among the Maritime countries.

I am advised that a similar suggestion was made by the Chamber of Shipping of the United Kingdom in an aide-memoire which was delivered to the Canadian High Commissioner in London and which, no doubt, may be made available to you.

The reasons for deferring enactment of clause 24 have already been broached by Mr. Miller, but they are more fully developed in the brief, of which you will have a copy, of the International Chamber of Shipping, which I was asked to read before you. Since you have copies, I will only summarize what is contained in the brief?

The International Chamber of Shipping wishes to point out to your committee that, first of all, it is fully conscious of the anxiety of coastal states throughout the world at the threat of oil pollution, and understands you would want to pass legislation in this regard, in view of the considerable extent of Canada's coasts.

It points out that in the past it has been instrumental in bringing about improvements in safety measures to prevent accidents at sea. For instance, it has recommended traffic separation schemes, and even though national governments may not have adopted these schemes it has strongly recommended to its members to put them into practice.

The International Chamber of Shipping, as Mr. Miller pointed out, has been supporting the work done by IMCO, The International Maritime Consultative Organization, and the work of the Comité Maritime International to work out a suitable international convention. I must point out to you that Canada is represented on these two bodies, and Canadian representatives have attended the discussions and meetings of both organizations.

In March of this year there is to be an international meeting of the Comité Maritime International in Tokyo at which Canada will have representatives, and I have been advised that there will be an international diplomatic meeting in November in connection with the proposed international convention on this matter of pollution, with which the present legislation is concerned.

There are two conventions under study by these international organizations. The first one has to do with the right of a coastal state, in the event of great and imminent danger of pollution, to take action on the high seas—action would include the destruction of the ship and its cargo. The other convention that is under study has to do with the liability of ship owners for oil pollution. In this proposed convention, as Mr. Miller pointed out, three points are covered. There will not be liability without fault, although the burden of proof will be reversed. There will not be unlimited liability. As the International Chamber of Shipping has indicated in its brief, there are two elements of cost to be considered in the operation of ships in relation to

the particular problem—hull insurance and protective indemnity. This is insurance which, as Mr. Miller explained, protects the ship owners against liability to third parties.

As the organization points out, if the ship is liable to be destroyed with no compensation for no better reason than it may interfere with the enjoyment of a beach, then insurance will be affected. Again, if the ship owner is to be made liable for pollution even though he may be the innocent victim in a collision then, again, the insurance rates will be affected. The Association goes further and says that legislation providing for limited liability might prove to be self-defeating.

Therefore, all of this means that the interests of Canada, as an important trading nation, require that legislation on oil pollution should strike a balance between the government's wish for compensation for oil pollution clearance and its wish to have its cargoes carried at the lowest possible cost. That is the problem facing all nations, and the problem that will be studied at the international meetings.

**The Chairman:** Where is that international meeting to be held?

**Mr. Brisset:** The international meeting is usually held in Brussels.

**The Chairman:** That is to be in March this year.

**Mr. Brisset:** In November this year. The C. M. I. meeting is to be held in March but in Tokyo.

**The Chairman:** March this year?

**Mr. Brisset:** In March this year.

This is a summary of the representations made to you by the International Chamber of Shipping in support of a deferment of clause 24 of the bill. I want now to pass to the recommendations of the associations, particularly the Canadian ones that I represent.

If your Government and your committee are not prepared favourably to consider at this time—until it becomes known that a satisfactory international convention can be adopted—deferment of the legislation, then there are three points on which I should like to comment and make recommendations in connection with the bill as it now is.

We criticize it—and I say this respectfully—because it imposes liability without fault, because it sets no limits on such liability, and because it imposes such a liability on a charterer other than one who is responsible for the navigation or management of the vessel. As Mr. Miller has pointed out, there is now pending before the United States Congress and Senate similar legislation, which was introduced two years ago

in a form somewhat similar to yours but which has been changed considerably as it has now been acknowledged that these three points have to be met. In other words, under the present legislation now before their committee there is no liability without fault, although there is a reversal of the burden of proof and there is a limit imposed.

I should point out that the limit imposed under the bill now before the United States legislators is \$450 per gross registered ton of the vessel's tonnage or \$15 million, whichever is the lesser. Last year, when the bill was reported out of the committee of Congress but not adopted the limit had been reduced to \$67 per ton or \$5 million, whichever is the lesser. I am reliably informed that it is very likely a reduction will be made in the figures I have quoted to you when the bill is finally reported out of committee. As I think Mr. Miller himself pointed out, I should stress that in view of the considerable international trade between Canada and the United States, particularly in the Great Lakes, it seems to me that there should be uniformity at least in the legislation of both countries.

We have had discussions with your Government, the Department of Transport, as to liability without fault. It has been pointed out to us, for instance, that while the operator of a tanker may not be at fault in an accident, if oil escapes from the tank of the vessel the owner of the tanker is the one who is considered to have created the possibility of such a risk and therefore should bear the consequences. We counter that by saying that the users of that commodity—to us this type of ship is carrying on an essential activity of benefit to the users of that commodity—must assume also through their government a certain proportion of the risk.

On the subject of liability without fault, I must point out to you that there already exists in the Canada Shipping Act provisions relating to expenses of removal of wreck. The act places on the owner of the ship a strict liability for removal of wreck without limit; therefore, that is a precedent for this.

I say to you that the position is not quite the same because past experience—we have had a number of cases—has shown that such a liability has not been and is not likely to be what could be liability for removal of a wreck, coupled with pollution of the shore installations or shorelines of your country. There is a much greater risk involved there.

In order to solve this first problem, I have prepared although with some anxiety, an amendment to section 495c which I would like to submit for your consideration. As you will see, from the section as it reads today, when the minister has cause to believe that cargo of a ship in distress is polluting, and so forth, he may cause the vessel to be destroyed or removed and sold. I suggest and respectfully submit this amendment



to you, Mr. Chairman and honourable senators. I think it is important for me to quote from the brief:

(1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned

(a) is polluting or is likely to pollute any Canadian waters,

(b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,

(c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

There is no change in (a), (b) and (c).

the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct.

There are two purposes or advantages to be sought in the draft which I have submitted to you as an amendment.

First, whereas your proposed legislation says that if this event happened the minister will step in and do what is necessary, I say that under the proposed amendment you would allow the owner, that is, the underwriters, to take the necessary major measures to avoid pollution or to clean it up if it has occurred, instead of incurring the risk of having his vessel destroyed or removed and sold. Therefore, I suggest to you that this will be an incentive for those concerned to use all their resources to do what is necessary and possible, with the assistance of the industry, in the case of an oil pollution, for instance.

The second purpose of the amendment is to attain the objective of the plan which is known as TOVALOP. I would like to say a few words about this plan, and in doing so I would quote or summarize what was said by the representative of the American Petroleum Institute before the Subcommittee on Air and Water Pollution of the Committee on Public Works of the United States Senate on February 4th.

He pointed out that the tanker-owning affiliates of certain major oil companies had initiated an international voluntary plan designed to encourage swift action in effecting the removal of oil discharges.

The plan has three objectives—to provide an incentive for the ship owner to act promptly if a spillage occurs to indemnify national governments for the reasonable costs they may incur in containing, preventing, removing pollution; and, thirdly, to assure the availability of funds to meet these objectives.

The full name of TOVALOP, by the way, is Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution.

The owner, under the plan, would either do the necessary to clean up the shore installations or he will reimburse the national government for the expenses incurred by that government for doing this very thing. He will in turn be reimbursed when he incurs those expenses or reimburses the government, by an organization that has been set up on an insurance basis, if you wish, and the extent of his possible recovery under the insurance scheme will be on a basis of a maximum of \$100 per gross registered ton of the tanker discharging the oil, or \$10 million, whichever is the lesser.

This scheme TOVALOP will be administered by a limited company registered in England, with headquarters in London, International Tanker Owners Pollution Federation Limited. Each tanker owner who becomes a party to TOVALOP will become a member of this federation.

It will start to operate when 50 per cent of the tanker tonnage will have joined, but will cease to operate, I must point out, if within two years, I believe, owners representing 80 per cent of the world's dead-weight tonnage do not become parties to the agreement.

When I refer to tankers, it excludes of course government owned vessels: we are talking only here of vessels outside of government.

I have with me and I will leave with your chairman a copy of the booklet which is now being published giving a full explanation of this scheme as well as the articles of agreement of the two organizations which I have mentioned.

The second point which I want to turn to now is that there should not be liability without negligence and there should be in cases of negligence a limit on liability provided there was no personal fault or privity on behalf of the person concerned. This policy of limitation of liability of shipowner is a policy adopted by all maritime nations, including Canada. Its purpose, as I am sure you know, is to foster maritime commerce as a matter of national interest, a commerce which, I remind you, is vital for Canada and for the continuity of which it depends almost exclusively on foreign ships for its overseas trade.

Canada adhered to the 1957 International Convention on Limitation of Liability of Owners of Vessels and you will find that Canada implemented its adherence by amending the Canada Shipping Act, Article 657 and following articles. It fixes the limit of a shipowner's liability at 1,000 gold francs per ton. Per ton here means per net registered ton plus tonnage of the space for propelling power. It is a bit different from the gross registered ton: it would be somewhat lesser than the gross registered ton.

The associations which I represent feel that this principle of limitation should be preserved in the present legislation and we submit this to you most respectfully. Otherwise one would have in one section of the act limitation of liability for certain claims and then for government expenses no limitation at all.

In this regard, to preserve this principle, I have again with some anxiety taken upon myself to prepare an amendment to Section 495*d* which will read this way:

All reasonable expenses less proceeds of sale as provided under subsection (2) of section 495*c* . . .

I think this is the intent of the legislation, but the reference may make it clearer . . .

incurred by . . .

Then (a), (b), (c) are not changed, and I will not read the text . . .

shall constitute a debt due to Her Majesty by

(d) the person or persons whose negligent act or fault . . .

This is practically the text of subsection (e) with the addition of the word "negligent" . . .

or whose servants' negligent act or fault caused the distress, stranding, wrecking, sinking or abandoning of the vessel, or the escape or discharge of the cargo or fuel from the vessel.

Then the following clauses are added:

In case of a collision between two vessels for which liability is apportioned between them, the liability of each vessel for such expenses shall be in the same proportion as that of their respective negligence.

The liability imposed by this section shall be limited to an aggregate amount equivalent to 1,000 gold francs per registered gross ton or the equivalent in Canadian dollars of \$5 million (United States), whichever is the lesser, whenever the person applying for such limitation establishes that he comes within the ambit of the dispositions contained in articles 657 to 663 of the Canada Shipping Act.

In any action instituted by Her Majesty under this section, evidence of a discharge of pollutant matter from a vessel shall constitute a *prima facie* case of liability on the part of the owner or demise charterer of such vessel and the burden of rebutting such *prima facie* case shall be upon such owner or demise charterer.

Now what is to be kept in mind in connection with this proposed amendment is the following: If the amount of the limit of liability recommended is in line

with that recommended before the Senate Subcommittee on Public Works and Air and Water Pollution of United States early in February of this year. I name in particular the American Institute of Merchant Shipping, the American Maritime Association, the Insurance Brokers Association and the Lake Carriers' Association.

You will notice that in the case of a collision it is to be apportioned, or liability is to be apportioned in the amount to the degree of fault and consequent liability in respect of these expenses of the government in the same proportion, and that is in line with article 648 of the Canada Shipping Act which introduces this principle in our own legislation in pursuance of an international convention to which Canada adhered in 1910. We incorporate the reversal of the burden of proof which is something included in the proposed convention now under study by the IMCO and the Comité Maritime National.

The fourth point which I want to draw to your attention is that in the case of a serious casualty involving pollution, for instance in the case of a collision between two vessels, the vessel at fault or the two vessels if they are both at fault to some degree will have to make available, assuming we are granted the privilege of limiting, to claimants including the Canadian government two limited funds; the first will be, under this legislation, clause 24 of the bill, to provide reimbursement to the Canadian government of the expense that they may have incurred to prevent the pollution or clean up the polluted matter, and the second fund will be to provide compensation for all other claimants other than the government for their expenses, because all other claimants in accordance with the provisions of the Canada Shipping Act and other claimants would include, I should point out, the owners of shore properties or beaches who would be doing their own cleaning up if the government has not done so for them.

To illustrate this, gentlemen, and we will not go into great detail on the figures, let us take the example of a possible collision between a tanker of 120,000 gross tons and an ordinary dry cargo ship of a gross tonnage of 12,000 tons. Here I might point out that 120,000 gross tons for a tanker would mean that this would be one of the largest and would give a dead weight tonnage of about 250,000 tons. In that case the tanker would have to provide to cover government expenses a limited fund of \$5 million which is the lesser of the two figures based on the calculations of \$71.50 or 1,000 gold francs per ton multiplied by the tonnage. Then the sum the other fund would have to provide would be roughly 100,000 gross tons multiplied by \$71.50 which gives a figure of \$7,150,000.

Now if there is loss of life or personal injury the fund will have to be increased to \$15,015,000 under the same provisions of the Canada Shipping Act.



which I have referred, namely article 657 and following.

In the case of the smaller vessel, the dry cargo ship, to cover government expenses their owners would have to provide a fund of 12,000 tons multiplied by \$71.50 which would amount to \$858,000 and to cover other claims you would have \$715,000, and this would be increased to slightly over a million and a half dollars if there are personal injuries and loss of life.

These are quite important figures, and I am sure in the light of what Mr. Miller has said you will appreciate the impact of these figures on the insurance rates which the shipowners will have to meet.

There is another point which I would like to bring to your attention although I offer no practical or definite recommendation in this regard or as to how the situation could be met. I would like you to consider the problem which would arise in the case of an accident resulting in a pollution of both Canadian and United States waters, which is a possibility which cannot be ignored in the case of ships plying in the St. Lawrence River, the international waters of the St. Lawrence, and on the Great Lakes. If there was no agreement between the two governments of the nature that the International Convention to which I have referred earlier is contemplating, you could find a ship involved in an accident of this kind liable to provide two funds, one to the United States government and one to your government. If you do not accept the principle or limitation of liability you will find that on the United States side the ship is liable up to a certain limit. On the Canadian side the ship is liable without limit. To avoid such a situation the proposed convention provides that if pollution damage occurs in the territory or territorial waters of more than one contracting state and actions are brought in the courts of more than one contracting state, the owner may pay the limitation fund into the courts or other competent authorities of any such state. Once he has done that all claimants must claim from that fund; there is no necessity for that owner to provide another fund in another state.

I would therefore respectfully suggest that if your Government proceeds with the enactment of section 4, at least something should be done to look into the possibility of reaching an agreement with the United States government in order to avoid what I will call the iniquitous results that would follow from dual liability, and especially dual liability with different limits or on different levels.

I have only one further point to take up before you, and I will be very brief on it. If you leave in your legislation this concept of absolute liability—that is liability without fault—we suggest to you that such a liability should not be imposed on a charterer other than a charterer responsible for the navigation or management of the vessel; in other words, such

liability should not rest on a voyage charterer or a time charterer. The reason is quite simple. A voyage or time charterer has nothing to do with the operation of a vessel. All a voyage charterer, for example, does is provide cargo to fill the space in the ship, as he would to fill the space in a truck or on a railway car, but he has nothing to do with the navigation of the ship, any more than he would have anything to do with the driving of a railway engine or a truck that may carry his goods.

I may say here that we have been assured—and it is why I will not speak any more on this subject—by the Department of Transport that an amendment would be proposed by the representative of the department to take care of this situation and remove the liability on the time or voyage charterer by defining properly the word “charterer”, and also that such liability would be removed from the shoulders of the master of a ship. Although I have no mandate to speak on behalf of masters, I would at least submit it is somewhat unjust to impose on the poor master of a ship, who may have his ship under the conduct of a pilot and may be down below in his quarters, an unlimited liability for pollution damage, to the extent of the figures we have been discussing with you, without any fault on his part.

One of the associations for which I speak today, the British Columbia Towboat Owners Association . . .

**The Chairman:** I might say here for the record that the members of the Canadian Chamber of Shipping include among its constituents the Shipping Federation of Canada, the Canadian Shipowners' Association, the Chamber of Shipping of British Columbia and the B.C. Towboats Owners' Association.

**Mr. Brisset:** That is correct, sir.

As I am quite sure you know, there is considerable barge traffic on the west coast. Some of these barges have been built by entrepreneurs who financed the building of the barges, quite often with subsidies provided by the Government. The barges are then let to an operator, who might be a tugowner. This legislation, if it were accepted in its present form, would put on the bargeowner responsibility for the type of expenses we are concerned with, even though in a great many cases the owners of the barges have nothing to do with the operation going on. All the bargeowner has done is really to finance the building of the barge in question. It would therefore be harsh to impose on these owners, it is submitted, an arbitrary responsibility as owner, whether or not they have any control whatsoever over the maintenance, navigation or management of the vessel. They remain owner, of course, simply to protect their financing of the barge in question. We submit that liability then should rest solely on the operator or the charterer of that barge and not on the owner himself.

That concludes my remarks, Mr. Chairman. I should be quite happy to answer questions if there are any questions the committee would like to direct to me at this stage.

**The Chairman:** Thank you, Mr. Brisset.

**Senator Flynn:** Do we understand the department is resisting the suggestion to delay the passage of this new principle until after the meetings of the international committees which have been mentioned by Mr. Brisset?

**The Chairman:** You are referring to the international organizations?

**Senator Flynn:** Yes.

**Senator Langlois:** As sponsor of this bill, I think it would be only fair to give the minister responsible for this legislation a chance to have the benefit of the very valuable representations which have been made to us this morning before he is asked to make up his mind about it. I would suggest that consideration of clause 24 be deferred until such time as we have heard from the minister in this respect.

**Senator Flynn:** What I had in mind was that it appears these representations have already been made to the department and that the department has up to now refused to budge from its present stand. Is that what we are to understand? Maybe Mr. Fortier could answer.

**Mr. Brisset:** Perhaps I could say this. We did have a meeting with representatives of the Government on February 11, when we explained the points we had in mind. We had not at that time, I must confess, prepared positive amendments; it was merely an informal discussion. If I remember rightly, we were told this would be taken into consideration. I leave the representative of the department to tell you what the position is now.

**Senator Kinley:** Are there any other representations?

**The Chairman:** Yes, there are, Senator Kinley. I think we should hear from Mr. Hyndman. Before that, are there any further questions you would like to ask of Mr. Brisset? He will be here anyway to answer questions later.

**Senator Flynn:** If the department is willing to delay the integration of the section, it would be better to know it now. It is usually not necessary for us to go into all these details and all the briefs before we know where the Government stands. If the Government is going to tell us next week that it accepts to delay the passage of this legislation, as far as section 24 is

concerned, very well—otherwise, we would be working for nothing here.

**Senator Kinley:** Surely we would not pass it until we read it, and it is a problem of time.

**Senator Flynn:** That is why I want to know where the Government and the department stands on this.

**Senator Langlois:** I think we should wait until we hear all the representations before we are asked to make up our minds about it.

**The Chairman:** I think Mr. Macgillivray would like to make a statement on this question but before he does I would suggest to the committee that we must hear these other representatives in any event, like Mr. Hyndman, and Mr. Hurcomb, and Mr. Cook wants to be heard with regard to sections 3 and 4. Is that right—or does Mr. Hurcomb also want to be heard on this point.

**Mr. Cook:** I want to be heard on this point and on sections 3 and 7.

**Senator Isnor:** Before the witness retires, his only objections to the bill is clause 24? Otherwise, you are satisfied with the bill?

**Mr. Brisset:** I should point out that I have another section in regard to which I have been asked by one of the associations, two of the associations concerned whom I am representing here, to make representations. It is section 7. I do not know whether it is in order for me to do so at this time, Mr. Chairman, or whether your committee would like to hear the other witnesses on clauses 23 and 24 which we have discussed. I will be very short, if I am allowed to do so now.

**Senator Isnor:** Let him finish his presentation.

**The Chairman:** Yes, I would think the committee is rather anxious to continue as soon as it can with clause 24 and perhaps we might have your representations on it and then, is it agreeable that after that we would call Mr. Hyndman.

**Hon. Senators:** Agreed.

**Senator Smith:** I thought you were going to call Mr. Macgillivray.

**The Chairman:** That is right. Mr. Macgillivray. We will hear him in regard to clause 24.

**Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport:** Mr. Chairman, one of the honourable senators has asked whether we are prepared to defer clause 24, because



we were then it would not be necessary to hear the other representations on it.

It is true that on February 11 there was a meeting of departmental officials, myself and others, with Mr. Brisset, Mr. Hyndman, Captain Hurcomb and others, at which they gave us an exposé of their arguments against many or most of the arguments that have been put forward today. We did hear this, we did bring it to the attention of our minister. However I should emphasize that we did not hear all of the arguments that have been put forward today and the minister has not had time to react. It may be possible that he can within a few days or even before this day is out. I am not sure. But I think we should hear the rest of the representations before we are asked to put the case finally to the Government to decide whether they will be prepared to consent to the withdrawal of this provision or part of it.

**The Chairman:** Thank you Mr. Macgillivray. Does the committee agree with this point of view? I think we have expressed agreement. Thank you very much, Mr. Macgillivray.

I want to suggest now that this bill is a very important one and the committee does not propose to deal with it in quick fashion. Will you proceed, Mr. Brisset?

**Mr. Brisset:** The other clause which I want to deal with now is clause 7 and more particularly sections 2 and 3 on page 5 of the bill before you.

Mr. Fortier explained to your committee the reasons for this particular clause, namely, to give effect to by-laws of the pilotage authority which might have been found unlawful by the courts, or which the Royal Commission on Pilotage criticized as being outside of the powers of the minister.

That meeting between the Department of Transport and representatives of the associations which I represent here, the associations had agreed to this type of remedial interim legislation, but it set a date for the expiry of the legislation. That date was March 31, 1969 and not December 31, 1969 as you will find in the text of subsection 3.

The industry furthermore urged that if this date was to be extended, namely March 31, 1969, it could only be extended by an order in council tabled before Parliament so that there could be an opportunity of discussing the subject if necessary.

I want to point this out because no doubt inadvertently when the bill had second reading it was mentioned that all those interested had agreed to the date of December 31; and as it reads the clause seems to permit the order in council to extend that date practically at will. I am not saying that it would be done injudiciously but still we submit there is too wide a power given there.

To restate the position which the shipping industry had taken in discussions which extended over a long period of time, I must say that the President of the Fishing Federation wrote to the honourable minister, Mr. Hellyer, on February 20, to restate such position. I would like to table before you, if I am permitted, a copy of that letter. This will conclude my remarks.

**The Chairman:** Is it agreed that this letter become part of the record?

**Hon. Senators:** Agreed.

(See Appendix "D")

**Senator Langlois:** I am sorry if, when I introduced this bill, I misinterpreted the meaning of the members of the Shipping Federation of Canada.

I also was at this meeting of the department officials and members of the Federation of Pilots and I think some others did also mention the fact that only part of the report was before us at the time.

As you know, this report has been composed of five parts and at that time only Part I of the report had been published. Even up to the present day we have only Part II before us.

I mentioned then that we were not to expect the Government to recommend to Parliament consideration of the legislation based on the report which was not properly before us. And I mention at this point, as others did at that point, that since there was no serious objection to my remarks I was under the impression that when this date which was agreed here—that there was no serious objection to a possible extension if the situation remained as it was at that time, and I again repeat that the situation has not changed greatly, but we still have only before us Part I and Part II of this report, and according to my information I do not think the complete report will be before us before the end of the present year, and I do not think that parliament should be asked to consider legislation based on this report before we have the whole Report before us.

**The Chairman:** You referred to the Canadian Shipping Federation. Did you mean the Canadian Shipping Association?

**Senator Langlois:** No, the Canadian Shipping Federation.

**Mr. Brisset:** It is a member of the Canadian Chamber of Shipping.

**The Chairman:** Have you anything more to add at the present time, Mr. Brisset?

**Mr. Brisset:** No.

**The Chairman:** Then may we hear from Mr. Hyndman. As I stated before, Mr. Hyndman is Chairman of the Canadian Maritime Law Association and is from Montreal.

**Mr. A. Stuart Hyndman, Chairman, Canadian Maritime Law Association:** Thank you, Mr. Chairman. Honourable senators, I think I should begin by saying briefly what the Canadian Maritime Law Association is, and what it does. The Canadian Maritime Law Association is one of 28 national associations affiliated with the Comité Maritime International, which itself was founded in Brussels in 1897. Since that date, namely 1897, the Comité Maritime International or as it is called for short the CMI has been responsible for most of the important international shipping conventions which have been agreed to since that date, and of which Canada is either a party or to which it has adhered in its own domestic legislation. The Canadian Maritime Law Association is a non-governmental legal organization dealing with the formulation of international conventions on merchant shipping and with the unification of international maritime and commercial law and practice. The membership, despite its name, is not composed entirely of lawyers. In fact it is an organization which is quite independent of the Canadian Bar Association. It is composed of representatives of the maritime trade such as shipowners, ship charterers, underwriters, merchants, average adjusters, and a number of lawyers who are directly concerned with this field of practice. I should say that in the final analysis the policy of our association, which of course is Canada-wide, is governed by the constituent members of whom there are ten, and those include the Canadian Board of Marine Underwriters, the Shipping Federation of Canada, the Canadian Bar Association, the Dominion Marine Association, the Canadian Chamber of Shipping, the Association of Average Adjusters of Canada, the Canadian Shipbuilding and Ship Repairing Association, the Shipowners Assurance Management Limited, and the Canadian Exporters Association.

Now when this Bill S-23 was introduced by Senator Langlois and came to our knowledge we were asked to attend a meeting in Ottawa, about which you have heard, on the 11th of February. At the same time just after that meeting I sent a circular to all our members including constituents and associate members describing briefly the nature of the bill with particular reference, of course, to clause 24 which is our and my only concern before this committee today. In so far as it concerns the constituent members and in so far as I did obtain any reaction, the reaction was unanimously against the provisions of the bill in so far as it relates it to absolute liability without fault, and unlimited liability. I need not go into the reasons why this reaction was so much a matter of consensus; these matters have already been thoroughly covered this morning by Mr. Miller and Mr. Brisset. However, I think it is important for you gentlemen to appreciate

that this was the view of the constituent members who reacted to the information about this bill.

As I said before, our primary function as the Canadian Maritime Law Association is to assure, in so far as is possible, that there shall be international agreement on matters which concern shipping as a whole in all nations, and of course, although we are not a nation, unfortunately, of shipowners, we are interested in ship operating. All of our cargoes are carried overseas certainly on foreign bottoms and we have naturally a great interest in the Great Lakes and ocean trade through the Dominion Marine Association where we are in fact owners.

So that the provisions contained in this legislation are of direct and immediate concern to this association. You have heard of the forthcoming meeting in Tokyo. I shall be attending that meeting with a delegation of approximately 14 which will include three observers from the Water Transport Committee of the Transportation Committee of the Government of Canada. As you have also been told, one of the most important subjects to be discussed next month in Tokyo is this very question of oil pollution, and what should be the liabilities with respect to oil pollution. Oil pollution certainly is an emotional issue, and I think consequently we should look carefully at any legislation in order to assure that what is being done is based on the logical and practical aspects of the question as well as what may be the emotional ones.

The bill which we have before us is not, of course, designed to prevent pollution; it is a bill which endeavours in certain areas to say what is done after pollution occurs. To attack any legislation dealing with pollution appears as though one is attacking motherhood or apple pie. This is not the case; our association strongly favours any legislation which goes to solve the question of the serious difficulties arising from pollution and which in any way goes to prevent pollution, but we do not consider that unilateral legislation at this stage of the type which you have before you is a practical solution to the question.

Now this question of uniformity of international legislation is of course to be discussed in Tokyo and hopefully at a diplomatic conference in November.

The argument advanced by some sources against deferring our own legislation is that it may be, for example, one year or even two years after November before any international agreement is achieved. Perhaps that is the case. We do not yet know. At least as a result of the forthcoming meetings in Tokyo, and possibly in Brussels in November, there will be a possibility of seeing what is the consensus of international views on the subjects, so that any Canadian legislation, if it has to be done unilaterally, can be done at that stage, namely later on this year, having then full knowledge of what is going to be achieved or what can be achieved internationally. We can then have a reasonable prospect of knowing what is going



to be acceptable both in the underwriting field and internationally.

Apart from the international question on the broad field, I think we should also emphasize, as indeed have earlier speakers this morning, the great importance in this country of having legislation which is, so far as possible, equivalent to that of the United States when we are dealing with international waters. The most seriously influenced areas for North America potentially damageable are the international waterways of the St. Lawrence Seaway, the Great Lakes and the connecting tributaries, such rivers as St. Marys, St. Clair and so on. So far as I can foresee, the situation would be virtually intolerable if on the one hand there is unilateral Canadian legislation which sets no limit to liability and creates an absolute burden regardless of fault, and on the other hand American legislation covering the same water—because obviously water is not subject to a dividing line and is subject to American legislation—which is quite the reverse in these important aspects of limitation of liability and absolute liability.

It is therefore with the utmost respect that I say we should at least defer consideration of section 495d of Part XXIV of this bill. Section 495d is the part dealing with the question of recovery of expenses, whereas section 495c is the part giving the minister the right to take action. I say with respect on behalf of my association, I think the minimum objective we should seek at the present time is for consideration to be given to a deferral of section 495d so that there would be no doubt, even if further legislation takes six months or a year, or more, that the minister does have the right to take action. The only element then remaining in doubt is the question of recovery of costs, which I think deserves very careful study in the light of the American bill S-7 and the forthcoming meetings at Tokyo and Brussels.

**The Chairman:** Would you care to give the committee your opinion on Mr. Brisset's suggestion concerning the amendment of section 495c? Mr. Brisset, you proposed an amendment to section 495c, did you not?

**Mr. Brisset:** Yes, Mr. Chairman.

**Mr. Hyndman:** I have a copy of Mr. Brisset's statement, I have read his proposed amendment and I agree with what Mr. Brisset suggests as to a possible amendment. What I am saying is that at a very minimum, even if we are not in a position to consider re-amending and putting this section into effect, we should defer section 495d but if we do decide that we must go ahead unilaterally in this field, consideration should be given to amending sections 495c and d to correspond with the text suggested by Mr. Brisset. We do not as yet know what international limit is likely to be set. There have been many, many meetings of the international subcommittee on this subject and we do

not know yet. It will be a very substantial limit, possibly in the neighbourhood of \$10 million, but we do not know. In the meantime, I think it would be unfortunate if we were to go ahead ourselves, make an absolute unlimited liability, and then simply have to re-amend our legislation six months or a year from now if we find there is international consensus which is contrary, as I feel very strongly will be the case on this question of unlimited liability and the burden of proof.

**The Chairman:** Thank you, Mr. Hyndman. Are there any further questions?

Captain Hurcomb, do you wish to appear now, or is there someone who should precede You?

**Mr. P. R. Hurcomb, General Manager, Dominion Marine Association:** I will meet your convenience, Mr. Chairman. I should be very happy to appear now.

**The Chairman:** Then perhaps you would proceed now. As I said before, Captain Hurcomb is General Manager of the Dominion Marine Association. I understand, Captain Hurcomb, at one time you were judge advocate of the fleet?

**Mr. Hurcomb:** I was indeed, yes. In spite of that I like to think that I have a certain competence in realistic matters!

Mr. Chairman, honourable senators, as your chairman has said, I represent the Dominion Marine Association, which in turn consists of the owners of the Canadian registered ships trading in the Great Lakes and the St. Lawrence River. These are the only Canadian registered fleets of any substance as far as vessels in the orthodox sense are concerned. Two or three of our ships have an ocean-going capability and do in fact trade in the off season in Europe and elsewhere, but by and large we are inland. We have 23 companies including the four oil companies—Imperial, Texaco, Shell and Gulf (formerly British American). By and large, however, our ships are dry bulk carriers. The largest of these, the 730-footers, carry one million bushels of wheat. They may also carry 30,000 tons of ore. They are very substantial ships. The oil companies have tankers. Several individual companies also have tankers, so we have that interest in this problem as well.

I very much appreciate the opportunity of appearing before you. I will try to avoid duplicating what has been said by speakers who have preceded me, who have expressed their views so eloquently.

I will try to highlight the points which relate particularly, as I see it, to our inland activity, without boring you with repetitions.

**The Chairman:** May we ask you, Captain, if you generally concur in the statements made to us by Mr. Miller and Mr. Brisset and Mr. Hyndman?

**Mr. Hurcomb:** I do indeed, sir. As far as Mr. Miller's evidence is concerned this is confirmed with discussions with our own insurance brokers, who confirm what he said, and I am sure what he says is perfectly accurate. In respect of the other two gentlemen's comments, generally I do agree—I may have a reservation, which I shall mention at the end.

First of all, I think we should emphasize, gentlemen, that we talk very much about "oil" pollution but actually section 23 relates to pollution through any source. For example, a cargo of potash which we carry from the Lakehead quite often could make one glorious mess in confined waters if it is dumped or spilled. You realize what would happen if one of our cement carriers—Canada Cement is one of our companies—had an unhappy incident in a bad spot in Montreal harbour.

What I want to get across is that we are not talking about oil alone, but the spilling of cargo of any kind that has a pollutant potential.

Therefore, we are thoroughly concerned with clause 24 of this bill.

We are also concerned because we may be in a position of the negligent party—perhaps colliding with a foreign tanker and causing pollution. We might be involved there as the person at fault. So we can be involved as owners—innocent owners or otherwise—or as the person at fault.

Our companies—our oil companies, particularly—have extended their efforts towards designing measures to prevent and control pollution. I think many of those measures are known. Large amounts of money have been spent in developing methods and devices and chemicals.

The other thing they have done of course is the TOVALOP plan described to you by Mr. Brisset and which I will not repeat. So they have not been just sitting back and waiting for the Government to act.

The point I am going to emphasize first of all is the involvement of international agencies, such as IMCO and the CMI. These have been mentioned. We feel international consensus is vital. We who are engaged in the St. Lawrence and constantly involved with United States and other international traffic in confined waters, we are very conscious of the need of a common approach to a problem of this kind.

As one of the previous speakers mentioned, if something happened in our marvellous and expensive section of the Thousand Islands, any kind of pollution or spilling, it is going to have an impact on both sides, affecting very expensive installations, on shore or otherwise. We should have a common approach, if possible, to the solution vis-à-vis the United States particularly. Therefore, we say, wait please for the discussion at the international organization and watch also, I suggest with great respect, developments that

are occurring in the United States today and which have been occurring for some weeks under their Bill S-7.

We respectfully suggest that the best thing, in the interests of everyone, would be a deferral of this section of the bill.

Nevertheless, we should mention specific defects as we see them in the sections as they are. On section 495C, it has been suggested that perhaps that section might be left in, since it simply enables the minister to act. But we feel it is too arbitrary. It gives to the minister absolute power to deal with a vessel that is in distress, stranded, wrecked, sunk or abandoned, and its cargo, without consulting the owner first. This is an arbitrary invasion of normal property rights, I would say.

In the United States, Bill S-7, the Bill places an obligation on the owner or operator of the vessel to remove the pollutant. If he does not take the necessary action—then, and only then, the Government is authorized to step in.

I say that if this section is to be accepted, it should first provide that the minister may order the owner to do the necessary, and then take action if the necessary action is not taken immediately. This is one suggested change we have, Mr. Chairman.

Incidentally, subsection (2) of that section emphasizes the arbitrary nature of this legislation in that having jumped into the situation without consulting the owner or giving the owner a chance to act, the minister may then compound the invasion of private property by selling the vessel and the cargo, again without consulting the owner. Surely the owner should at least have the right to pay the compensation or make some arrangement to pay the compensation, before the ship is sold. This is the arbitrary tone of the whole section that we find most objectionable. So much for section 495C.

Now, in regard to section 495D which is perhaps the more important one. Here again, as I mentioned before, the owner should be given the opportunity to deal with the situation first. He might be in an ideal position to do the necessary and he could probably do it at very much less cost than the Government could do it for. So let us have the owner given the first chance to take action.

Our second point is the one that was emphasized so strongly and so eloquently by previous speakers, that liability should be based on fault. For example a tanker at anchor which is struck through the negligence of some other vessel—to hold the owner of the tanker responsible seems to flout the principles of laws governing maritime affairs as we understand them.

I do not like to keep harping about the United States legislation, Mr. Chairman, because of course we



are very often ahead of them and far more enlightened than they; but it may interest you to know that in the United States bill the owner, to be liable, must be established to be at fault, he must be negligent. They have recognized that.

The third objection is the limitation of liability, which has been thrashed out, I think very fully and very effectively.

Before I mention that, sir, there is one point on this point that liability should be based on fault. Let us say the Crown collects from the innocent party—as it may do, it can collect all the costs from the innocent party, because it is convenient to do so, it could do so—what are the rights then of the innocent party vis-a-vis the party whose negligence caused the accident?

I do not pretend to be the greatest maritime lawyer in the world but I sincerely doubt whether the innocent owner, having been saddled with the full cost, will be able to recover all that cost from the third party at fault—limitation of liability provided for by the Canadian Shipping Act itself may come in. This is a large legal question which I leave to better minds than mine, but it casts further doubt on the prudence of this legislation and further suggests a need for more study. There must be limitation of liability, we say. This has been emphasized by previous speakers. It may interest you to know that although there are some differences in the type of insurance of our ships, I am told the maximum liability for our vessels in this protection and indemnity field is at the rate of \$150 per gross registered ton, plus an excess amount of \$3,500,000.00. Now, that means our largest ship which is 20,000 tons—you would multiply 20,000 tons by \$150 and you would get \$3 million to which you would add the excess of \$3,500,000.00 in order to find the total maximum coverage, which would be \$6,500,000.00. Any increase in that ceiling combined with the factor of liability without fault could send insurance rates skyrocketing. And in our business, as most of you know, the margin of profit is pretty shaky these days.

**Senator Isnor:** This applies to the St. Lawrence and the Great Lakes?

**Mr. Hurcomb:** I am speaking of shipping from the Great Lakes down as far as Les Escoumins.

**Senator Isnor:** There are lower rates in Halifax.

**Mr. Hurcomb:** There are ice conditions, and in different conditions different considerations apply.

**Senator Isnor:** But there are no ice conditions in Halifax. It is clear.

**Senator Flynn:** That sounds to me like propaganda.

**Mr. Hurcomb:** Mr. Chairman, I do not speak of rates because these differ between companies and are a secret matter. I speak only of coverage. It is \$6,500,000.00 for the largest ships and varies downward for the smaller ships. I would ask you gentlemen, looking at the St. Lawrence and seeing it in summertime, and looking at it during Expo, with literally thousands of small boats buzzing around in all directions, and I would ask you to think of one of these small boats colliding with a tanker somewhere or other and being subject to unlimited liability. This just highlights what I conceive to be the danger of this.

The next and I think the final specific thing I have to say about this section is that once the minister has stepped in and has taken action then the party against whom he may claim must pay all the costs incurred by the minister. There is no curb on the minister or on his authority to spend money in this respect and charge it to us. We are all aware that governments usually get socked a lot more than private enterprise.

**Senator Kinley:** He has considerable authority now, has he not?

**Mr. Hurcomb:** Yes.

**Senator Kinley:** But we never heard of its being invoked to the full.

**Mr. Hurcomb:** That may be.

**Senator Kinley:** He is very careful about his authority in that regard.

**Mr. Hurcomb:** I would hope so. On the other hand, one must look at the legislation and look at what it could mean.

**Senator Kinley:** This enlarges his power, does it? These two or three paragraphs enlarge his arbitrary power.

**Mr. Hurcomb:** It enters a new field entirely in effect and it gives powers in that field.

**The Chairman:** At this point, Captain Hurcomb, would you care to tell the committee what was the amount of damage or the amount of liability in regard to the *Torrey Canyon*? Are the figures available?

**Mr. Hurcomb:** I do not think the final figures are available. I just finished reading the recent book *Oil and Water, The Torrey Canyon Disaster*, and I understand the latest figure is something in the neighbourhood of \$9 million United States. They are still settling claims. Perhaps Mr. Miller could tell us something about this.

**The Chairman:** Mr. Miller, would you like to enlighten the committee on this? I am sure many of the members are interested.

**Mr. Miller:** Yes, indeed. The claims made against the owner of the *Torrey Canyon* by the British and French governments are of course the subject of a great deal of dispute. The way the oil was cleared up was, and this is not just my own opinion, but the opinion of the British parliamentary committee who looked into the matter, hamfisted to say the least. It was done in a very expensive fashion. The claims being put in are obviously very inflated and obviously the subject of considerable dispute. As the parliamentary committee said, nobody in their senses would ever bomb a vessel to try and disperse oil. Be that as it may, the claims so far as we know by the British and French governments are about two million pounds sterling for each government which correspond very closely with the total figure which Captain Hurcomb gives of \$9 million United States dollars.

**Mr. Hurcomb:** Just to follow what I was saying, if the minister has authority to spend as much money as he likes, we would want the same kind of curb that is in the United States legislation, that the minister is entitled to collect only expenses "reasonably" incurred by the government.

**Senator Flynn:** That was suggested by Mr. Brisset already.

**Mr. Hurcomb:** Finally on this point we have tried to establish this legislation in its present form as premature. Speaking bluntly we think it is superficial in many respects and requires considerably greater study by the kind of people, and I exclude myself, who talked to you today and who have knowledge of these things. I therefore strongly recommend that there be a deferral at least until next November, and by then, as Mr. Hyndman suggests, we will at least have a consensus.

Now, finally, Mr. Brisset has made specific recommendations for amendments of these two clauses. Glancing at them quickly, as we have been able to do, Mr. Brisset's redrafts seem to be sensible, but I would like to give them a lot more study too. Speaking on behalf of my clients, I do not feel I could concur with those amendments now. I would want to study them a great deal further in the light of all these things.

Finally, and this is final, I agree that Masters should be exempt from any liability in this matter. All liabilities should reside with the owner or the operator or demise charterer as has been suggested by others. I think that is all I have to say on this suggestion.

**Senator Flynn:** I wonder if the witness, or any of those from whom we have heard, have drawn the attention of the committee to the amendment in 495d. In the case of the Crown the expenses incurred may be recovered, but this would not be the case of a private citizen whose property would be fouled in the same circumstances. This seems strange to me because

it has unlimited liability towards the Crown only and not towards any other person.

**Mr. Hurcomb:** I am sure, sir, Mr. Macgillivray of the Department of Transport can explain that. I think he might say that the abutting land owner has a civil action against the ship.

**Senator Flynn:** But with no "fault" consideration there at all.

**Mr. Hurcomb:** I would say not. However I am sure the Transport officials will clear this up. It is an interesting point.

**The Chairman:** Any other questions? Thank you, Captain Hurcomb.

**Mr. Hurcomb:** Like Mr. Brisset, I had planned to say a word or two about section 7.

**The Chairman:** Well, in that case, we would like to hear from you on that now.

**Mr. Hurcomb:** Section 7 is the one that Mr. Brisset spoke about briefly at the end of his remarks. To get my point across I will just touch on the background of this legislation very briefly. The Royal Commission on Pilotage was convened on November 30, 1962, over six years ago. We are not critical of the commissioners; we think they have done a magnificent job; it is a difficult task, which they have done painstakingly, and it has taken this time. But six years have elapsed. Part I of the report was published on July 17, 1968, as I recall, seven and a half months ago. I thought the consensus was that Part I, providing as it did the principles the commission had in mind, would in itself provide enough material for any basic legislation that had to be passed. The other volumes deal with different pilotage areas in great detail, but Part I provided the bones or structure that the commission had in mind.

I know that Senator Langlois' view of this was different. He felt we should await the arrival of all the volumes. The view of most of us, however, which thought was shared by the Deputy Minister of Transport, was that the first volume was enough to start with. We were heartened too by a press release from the Prime Minister's office on July 17, the day Part I came out. The Prime Minister was quoted as stating:

... a small task force, under the direction of the Department of Transport, will be set up to launch an early review of the report with a view to expediting implementation of the recommendations. The Government intends to proceed quickly with preparation of the appropriate legislation. The majority of the recommendations of the commission appear acceptable in broad terms.



That was July 17. The next day Mr. Baldwin, the Deputy Minister of Transport, called us to the meeting Senator Langlois has spoken of. He asked us in effect to exercise restraint in taking advantage of the legal loopholes that had been revealed by the pilotage commission report. He asked us for restraint on the basis that if we all started opening this can of worms with all sorts of legal actions the whole system would be seriously impaired and the security of the St. Lawrence would be impaired. We therefore all agreed, as Senator Langlois mentioned, to exercise restraint in asserting legal rights, but we did so with the fear in mind that if the Government got interim legislation through, such as they are putting forward here, people in authority would breathe a sigh of relief and say to themselves, "We are off the hook now on the legal business. The 'urgent' tag comes off this matter. Let us deal with other important matters", and the outcome would be serious delay in the work. This is what we are afraid of.

Therefore we put in a deadline as a condition of our restraint of March 31, 1969. That gave seven months. Perhaps I should not speak personally, but I have had a hand in drafting a considerable amount of legislation in my time, and if you cannot do something like this in six months you are not likely to be able to do it at all. Anyway, that was the point, seven months. Nothing has really happened that I know of. We now see in the bill much to our surprise—and we were not informed of this at all, much less did we agree to it—that they are now given to the end of this year, December 31, with the right to extend the period of time.

**The Chairman:** What section is that?

**Mr. Hurcomb:** This is section 7 subsection (3). It says this remedial legislation will expire, cease to have force and effect, on December 31, 1969 or such date not later than twelve months after that prescribed by order in council. There is therefore scope for two years there virtually, which they can achieve simply by getting a routine order in council passed that nobody will ever know about until it is too late. This is what we are afraid of and determined to resist. We are not going to have delays. There are people who, I think, would like to see the system remaining as it is with these legal matters cured, who would be quite content to leave things as they are. We are not.

Perhaps, Mr. Chairman, at the risk of boring you I should tell you particularly why we are not willing to wait. One of the things we are saddled with in the heavy cost burden this industry has to bear is the need to pay pilotage dues in the districts of Montreal and Quebec, i.e. from Montreal right down to the Gulf of St. Lawrence, whether we use a pilot or not. This is called compulsory payment of pilotage dues and amounts to thousands of dollars. Our people who ply these waters continuously, our masters and our mates,

are just as competent to handle these ships as the pilots.

**The Chairman:** Do you apply the term "feather-bedding" to this?

**Mr. Hurcomb:** My master told me never to use that word.

**The Chairman:** I am sorry I brought it up.

**Mr. Hurcomb:** This costs thousands of dollars a year. The by-law imposing compulsory pilotage is as clearly illegal as anything could be. I can explain this to you, but I need not because I think everybody has agreed this is so. We could last season have said, "O.K. boys, that is all of that nonsense. We will stand on our legal rights and save thousands of dollars". We did not do that; we exercised restraint, as we were asked to do, but only for that season, and that season is now over. We are now being put in the position where because these illegal by-laws will be validated by this legislation we will have to continue to pay this.

**Senator Kinley:** Is there not a provision that the experience of the captain can be taken into consideration on these waters?

**Mr. Hurcomb:** In these waters that is exactly what the royal commission recommends. I should have mentioned that. If the royal commission recommendation is implemented masters will be tested on the basis of their knowledge of these local waters and if they pass, as we expect they all will—and we would not have them in that ship unless they did—their ship will be exempt from pilotage. This is what we want, but when are we going to get it?

**Senator Kinley:** I thought you had it.

**Mr. Hurcomb:** Oh no, sir. We are exempt from pilotage above Montreal and into the Great Lakes. In the Montreal and Quebec districts we do not have to take a pilot but we have to pay for it, so we might as well take it. That is the situation. This is one of the reasons we are so keen to have this thing implemented, and we will not brook any further delay. To cut a long story short, what we are respectfully asking is that subsection (3) of section 7 be amended, in a form that I will ask to place on the record, to say that the act expires December 31, 1969. We know now that we will not get the new pilotage act by March 31, next month.

I guess we are saddled with all this. So our amendment would be:

"(3) (a) This section expires on the 31st day of December 1969 unless before that date this Act is extended to a later date

which may be fixed by proclamation of the Governor in Council.

- (b) A proclamation under subsection (a) shall be laid before Parliament not later than fifteen days after its issue, or, if Parliament is not then sitting, within the first fifteen days next thereafter that Parliament is sitting.
- (c) Where a proclamation has been laid before Parliament pursuant to subsection (b), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.
- (d) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect and this Act shall cease to be in force but without prejudice to the previous operation of this Act or anything duly done or suffered thereunder or any offence committed or any punishment incurred.

What we have done here is borrowed this from an act called the Maritime Transportation Unions Trustee Act, which is 12 Elizabeth II, Chapter 17. That was the act creating a maritime board of trustees.

The point was that one could not extend it by a simple order in council, that it should be debatable. This is what we strongly recommend, that this be done. With that, I thank you for your indulgence.

**The Chairman:** Thank you, Captain Hurcomb. I want to ask the advice of the committee as to how long we should sit. I understand there is only one witness to be heard, Mr. Cook.

**Mr. Cook:** I will be brief.

**The Chairman:** We want to give you all the time you need. Are there any other persons here to be heard? We shall hear Captain Cook now. He is the President of the Canadian Merchant Service Guild. Would you explain the nature of the organization that you represent?

**Mr. Robert F. Cook, President, Canadian Merchant Service Guild:** My association represents the vast majority of masters, mates and ship's pilots, engineers, across Canada from Newfoundland to British Columbia, and other ship's officers, all ships' officers in general.

In dealing with the matter of oil pollution we are primarily concerned with one particular part of the proposed section, that is dealing with the responsibility of the master in so far as damage is concerned.

I was pleased to see that the DMA representative and the representatives from the Chamber of Shipping also agreed with us that the master should be excluded from the responsibility for liability. I am not going to reiterate many of the things which were said by previous speakers very capably and very thoroughly but we agree with them that their definitely should be a limit to liability. To expect the shipping company to operate a vessel in a circumstance where they could be subjected to very high legal cost, without being able to get proper insurance coverage, is absolutely and thoroughly unfair.

I am not trying to defend particularly the shipping companies, other than the fact that if we do not have a healthy shipping industry our people do not work and for this reason I am very concerned with what takes place in the shipping industry in general.

Further than this, I also agree with the previous speakers when they say that there should be a matter of fault shown before the liability takes place. So we are in full agreement with those gentlemen on those areas.

However, we do agree with what is the intent of the legislation, to protect the citizens of Canada and the Crown against high cost caused by oil pollution and clean-up. There should be some responsibility from the shipping interest but I think it should be done in such a manner that there is a definite liability ceiling and that there definitely should be fault shown before such action should be taken.

Getting back to the matter of the master, as was pointed out by Mr. Brisset, the master could very well be charged with responsibility of an action which takes place aboard his vessel, even though he is nowhere around such activity. He may be, as Mr. Brisset has stated, down in his bunk. Our masters take the vessels on the Canadian ships from Cornwall straight down almost to Quebec City by themselves because this is part of their responsibility when they get in narrow channels and so on, they make it a definite responsibility of theirs to be on the bridge. But they cannot stay awake forever, they may be up for 12, 18 or 24 hours, they have to go down and sleep and may leave the operation of the vessel in the capable hands of the pilot.

**Senator Rattenbury:** What about their officers?

**Mr. Cook:** They may leave it in the hands of the officers, but the master is still responsible under the Canada Shipping Act. Therefore we think it would be very unjust to have this man responsible for an action of which he may very well be innocent.



Furthermore, I do not think it has been pointed out what well could happen here is that the companies could be doubly penalized because of the introduction of this particular section, by virtue of first having to take insurance out on the vessel and secondly probably having to have an insurance policy out for their master. So they have got to take two policies covering the same particular problem.

You may well say it is the responsibility of the master to take out his own insurance but I can assure you that such insurance, if it were available, would be so costly that the average master, who is merely on a wage, could not afford it. Therefore, in order to be able to get masters, I am sure that companies would have to be responsible for their liabilities, and this is normally the procedure at present.

For these reasons I would say, gentlemen, that we do not think the master should be responsible and, secondly we feel that there should be coverage within the laws of Canada protecting the Crown whereby the shipping companies are responsible to a degree with a liability restriction and by showing fault. They should be responsible for the consequent accidents or whatever may happen which would cause oil pollution.

**Senator Kinley:** What financial responsibility is on the captain? He could be disciplined as the captain for being negligent in his duty, but would he be responsible for any financial loss to the ship owner?

**Mr. Cook:** Yes, sir, he is responsible now under the Canada Shipping Act. We had a case a few years ago where a captain of a tow boat got into an action and was sued for \$250,000 and lost the case.

**Senator Kinley:** As the captain?

**Mr. Cook:** Yes. As an organization we take out liability insurance on behalf of members of ours who are masters, and many of the companies take out liability insurance on their behalf.

**Senator Kinley:** Do you classify cargo ships and tankers? I notice that you talk about tankers and you talk about cargo. What about the fuel cargo to propel the ship? Is that considered cargo?

**Mr. Cook:** No, not in actual fact. It is considered cargo; for instance, when you are dealing with your load line, it is a part of the gross or net tonnage of the vessel.

**Senator Langlois:** In order to save time, and I do not want to interrupt the witness, but I think I should inform the committee at this stage that the department has an amendment at this time in the case of the charter.

**Mr. Cook:** I am pleased to hear that.

**The Chairman:** Was that Master insured?

**Mr. Cook:** No, and this is the reason we got into this field of liability insurance for Masters.

That is all I have on the matter of pollution, but I would also like to speak on clause 7 covering pilotage situations.

I may say, as always happens when you have a meeting with a number of people, after the meeting you usually get two or three versions of what took place at the meeting, and it would appear that this happened with the meeting held by the people involved, the shipping interests, with the Department of Transport last summer. I am in full agreement with Senator Langlois when he states it was pointed out quite emphatically that it would be difficult to draft a bill covering the problems of pilotage without having the full report of the Royal Commission on Pilotage which was prepared at an exceedingly high cost and five years of work was put into it by the government and the representatives.

Secondly, I might point out, that at that particular meeting it was also stressed very strongly by the Deputy Minister of Transport and by the Director of Marine Regulations that being realistic and being knowledgeable, as most of the people involved in this meeting were, it would be almost impossible to expect any bill of this magnitude to be drafted, go through committee and be passed in less than 18 months. The 18-month figure was used as a minimum period of time by various people in the discussion. I think Senator Langlois also mentioned it would take a considerable length of time.

Now in dealing with the two clauses which we now have before us, and dealing with the Royal Commission on Pilotage, we were told when section 1 came out that this was going to deal with everything in principle that was going to take place in the revisions within the pilotage authority. And lo and behold when section 2 came out covering districts in British Columbia and New Westminster we found that many very large and serious changes were being contemplated by the authors of the report which we had no idea were in the picture when we were dealing with section 1. Now we are very concerned that the same kind of thing will happen with sections 3, 4 and 5, that many drastic changes will be contemplated, ones which are of the utmost importance to pilots in particular and also to shipping companies. I think it would be at this time rather ridiculous to try to draft any kind of legislation covering problems which are not yet laid on the table because it could mean we would have to start revising legislation which was passed on a short term notice just in order to expedite matters.

I think I am in full agreement with the senator, and I believe Mr. Macgillivray can speak for himself, but at that time it appeared to me the government official took the same position.

**The Chairman:** Any questions?

Thank you, Mr. Cook.

Before we adjourn, we have a gentleman who came from a long way away from here to attend this meeting. Therefore I would not wish to adjourn without giving Mr. Miller an opportunity to make any statement he wants to make as a result of the proceedings before the committee.

**Mr. Miller:** Thank you for that statement, Mr. Chairman. I also want to thank you very much for listening to what I had to say. I was speaking simply as an insurer trying to say what could be done and what could not be done. Now I have one comment I would like to make at this point if not in confidence at least in semi-confidence, if I may put it that way. We have been asked to advise various governments on this matter including the Government of the United Kingdom. They asked us at one point how much can be insured and we said, to use a rather vulgar Anglo-Saxon expression, it is a question of "suck it and see." We have done this so that we could be quite certain that with people like yourselves who are really anxious about this problem we would be able to come up with and give you certain facts and not just guesses. Thank you very much.

**The Chairman:** Thank you, Mr. Miller.

**Mr. Cook:** Mr. Chairman, I did not want to confuse issues while I was at the table just now, but I do have a few words to say on the part of the bill dealing with landed immigrants. I would be prepared to come back at some other time to deal with this matter, or I can deal with it now, whichever you wish.

**The Chairman:** What does the committee suggest in that respect?

**Senator Langlois:** Let us deal with it now.

**Mr. Cook:** Mr. Chairman, honourable senators, on page 2 clause 3 deals with a contemplated change in the legislation which would change the present system whereby only British subjects may write his Master's, Mate's, or Engineer's certificates unless they are Canadian citizens. Now the contemplated change here would enable a landed immigrant from any nation whether British subject or not immediately upon becoming a landed immigrant to write his Master's, Mate's or Engineer's Certificate to sail in Canadian waters.

Now many people in Canada are under the impression that there is an abundance of marine officers' jobs and a shortage of marine officers. This is not the case. I wish it were, but it is not. As many of you know, the marine industry in Canada is a declining industry; we have no deep sea fleet and we have to depend on the Great Lakes fleet and the coastal fleet. We are finding through the trend of the industry today that on the Great Lakes they are now building vessels of 27,000 tons so that now one vessel does the work that three vessels previously did. The result is that now you have two crews of ships' officers unemployed. The same thing is happening with the two boat industry in British Columbia where they are now building barges as big as football fields. They are now towed by one tug whereas a few years ago they would have needed four or five tugs to do the same amount of work. Consequently, three or four crews are laid off.

We are now finding a situation in which there is a shortage of ships for marine officers in Canada and we are very concerned about this. This legislation proposes that we open our doors to people from any country in the world to emigrate to Canada with the idea that because they are officers in their own country they can immediately write for certificates and then be on the market as ships' officers in Canada. For one thing, it is thoroughly unfair to those who immigrate here with this understanding, or misunderstanding as the case may be.

There are hundreds upon hundreds of these people who want to emigrate to Canada. Our name is generally given, by Canadas' representatives in various countries throughout the world, to refer to for information on whether or not there are jobs here. We get about 30 to 40 letters day from all round the world asking how people can come to Canada, how they can get into the shipping industry, get a ship and so on. It is obvious to us that if this type of thing were allowed we would soon have an overabundance of ships' officers, and many, many unemployed ones.

We are concerned for Canadian citizens and for the shipping industry in general. Over the last five years at least we have been meeting with various departments of education in Quebec, Nova Scotia, British Columbia and other Maritime provinces to try to establish a better upgrading system for young Canadian citizens who are entering the shipping industry. We have not been completely successful in this; in our estimation, we still do not have a good program to provide the incentive for young Canadians to enter the marine industry and make it their future.

If we open the doors as contemplated here we would completely stop Canadian citizens from even contemplating entering the marine industry. We would cut out another industry offering employment opportunities, because we would be swamped with



certificates. Indeed, we would be swamped with senior certificates. Some of these people would probably be masters in foreign vessels out of Holland, Denmark, Sweden, Norway, Italy, Spain—you name it. We would have an overabundance of ships' officers. We do not think this is fair to the citizens of Canada.

Usually legislation of this type is proposed on an international level on the basis of a reciprocal arrangement; in other words, "If you allow people to come into our country and become landed immigrants so that they can write for certificates, we will allow the same thing." Here we are opening the door to, for instance, American immigrants to write for certificates and take jobs in the marine industry as ships' officers. A Canadian cannot do that in the United States because there a person must first become an American citizen before he can write for a certificate, so there will be no fair reciprocal arrangement in that respect. What could result from this would be our ending up with the dregs of the marine industry in the United States, people who are unemployable in their own area in this industry, people with long histories of perhaps drunkenness or irresponsibility. Because they cannot get jobs in their own country they say to themselves, "I can go to Canada and immediately walk about a Canadian dock as a ship's officer", so we end up having to thresh out the wheat from the chaff for a long period of time.

I should like to make a suggestion through you, Mr. Chairman, to your committee about what could be done. Perhaps there could be a section making it possible by regulation to allow landed immigrants to write for certificates if there were a sufficient number of jobs available in the country; in other words, allow the Minister of Transport to have a kind of quota based on knowledge of what is happening over the employment of ships' officers in Canada. If, as I hope, there is an increase in the number of jobs in the marine industry in Canada the minister would be able to take emergency measures very quickly. We would not be averse to that, but merely to open the doors completely to anyone from any country in the world to come to Canada and overcrowd the industry, which is already overcrowded, would be completely unfair to all those who have made seagoing their life's work.

**The Chairman:** Thank you, Mr. Cook.

**Senator Kinley:** I think there are provisions in Canada preventing people going from province to province.

**Mr. Cook:** That is true.

**Senator McElman:** I would simply comment that I think this representation should be made to the

Department of Immigration rather than on this bill. We are dealing with competence here, not numbers.

**The Chairman:** We will insure that that department gets a transcript of the evidence.

Honourable senators, will you be agreeable to adjourning this meeting at the call of the chair for probably next Thursday?

**Mr. Hyndman:** I was wondering, Mr. Chairman, while we are here, and while Mr. Miller is here, whether it would not be of benefit to hear some remarks from the representative of the Department of Transport, so that if there is anything to be dealt with we or Mr. Miller could answer it now, while the necessary witnesses are here.

**The Chairman:** Mr. Fortier, would you care to make any statement now, or Mr. Macgillivray?

**Mr. Macgillivray:** Mr. Chairman, there is a considerable amount of material in the representations made on clauses 23 and 24 upon which we could comment, and I am sure it would take me an hour merely to comment on it. The suggestion has been made that either the whole of clause 24 be deleted or that section 495D, which is supplementary to it, should be deleted. We were aware this representation was going to be made because we had been given advance notice at our meeting of February 11. However, we had to assemble certain information before this was put up to the minister. All I can say is that it has been put up to the minister and we have no answer yet whether the Government would consent to withdrawal of the whole of clause 24 or of the whole section that appears to be causing the most concern.

There are quite a number of items that have been mentioned by the witnesses from the shipping industry in relation to clause 24 and clause 23. A number of points have been brought up and facts cited that were not given to us prior to today.

**The Chairman:** May I interrupt for a moment, Mr. Macgillivray. I think the burden of quite a lot of the remarks we had from these gentlemen was that we should not deal with this bill in too great haste. I have indicated to you that this committee had no intention of dealing with this bill in haste but would give it very great study.

Consequently perhaps the only person who would be affected by any great delay would be Mr. Miller. He would not be able to be here again. I suggest to the committee that it might be better to have another full meeting in regard to this, where Mr. Macgillivray would speak. He says he will require some time and he could speak fully and after preparation. Does that appeal to the committee?

Hon. Senators: Agreed.

The Chairman: We would like the other witnesses to return and hear Mr. Macgillivray, and then if they would like to make further representations we would be willing to hear them again. Of course, Mr. Miller, you can come back also, if you like.

Mr. Macgillivray: I understand that Mr. Miller is going to appear before a United States Senate Committee a week next Wednesday, and it may be that he would be available.

Mr. Miller: I hope it is Tuesday, actually, and if I can help, may I say my convenience is the last thing to be

considered by the committee. It is a very important matter and my group so regards it. If I can help next Thursday, I would come back.

The Chairman: I suggest we adjourn until 10 a.m. on Thursday next. We extend an invitation to anyone who would like to appear again, including Mr. Miller, to be here then. We will listen first to Mr. Macgillivray, or Mr. Fortier, or any other officials of the department. Then we will give an opportunity to the present witnesses, or others, to appear before the committee.

Hon. Senators: Agreed.

The committee adjourned.



## Appendix A

STATEMENT OF PETER N. MILLER  
DIRECTOR, THOS. R. MILLER AND SON (INSURANCE) LIMITED  
BEFORE THE SENATE COMMITTEE  
ON TRANSPORT AND COMMUNICATIONS  
FEBRUARY 27, 1969

STATEMENT OF MR. PETER N. MILLER, LONDON INSURANCE EXECUTIVE

Mr. Chairman and Gentlemen:

My name is Peter N. Miller. I am a Director of Thos. R. Miller and Son (Insurance) Limited, of London. My firm have been brokers at Lloyd's for nearly 70 years and I personally am also an Underwriting Member of Lloyd's. My firm has always been responsible for placing the Reinsurances for the London Group of Protection and Indemnity Associations (including the Scandinavian Associations) to which my colleague Mr. J.C.J. Shearer has referred. For the last 11 years these Reinsurances have been my personal responsibility.

I thank you, Mr. Chairman and Gentlemen, for your kindness in allowing me to give testimony to you; this testimony is in support of that already given by Mr. Shearer and in elaboration of certain points made by him. Mr. Shearer spoke on behalf of the Associations. I speak on behalf of the Reinsurance Underwriters, the other major parties to the insurance of Shipowners' Liabilities.

First, I would like to tell you briefly how the Reinsurance of the London Group is arranged. I receive instructions each year from the Group (since their Reinsurance Contract is arranged on an annual basis, like most Insurance Contracts), and these include the instruction to obtain the maximum amount of coverage, using all available Markets. The actual placing of the Reinsurance Contract then takes my firm about two to three months to negotiate and complete, since we have to place the risk in London, in the provincial Markets of the United Kingdom, the European and American Markets, those of the Far East and any others available and willing to accept part of the risk. I am thus able to be definite when I say that my firm obtains the maximum amount of Reinsurance coverage possible.

The Contract is placed to reinsure the Group against liabilities in excess of a so-called "retention" by the Group, that is, there is no reinsurance against liability on claims until they exceed a stipulated amount. The size of this "retention" varies, but

basically the Group assumes all claims other than those in the major catastrophe class, without benefit of reinsurance. Thus, by the co-operation between the Group and the Insurance Markets of the World which it is my job to arrange, the shipowner is protected to the maximum possible degree. It is not possible for commercial Underwriters to write Policies of Insurance for this type of risk without a limit on their total coverage. I must therefore say on behalf of underwriters that the proposal of Section 24 of Bill S-23 to introduce unlimited liability presents them with an impossible situation. Unlimited liability of this kind is as such, uninsurable.

In order to elaborate on the protection which *would* be available, I must for one moment turn to a subject mentioned by Mr. Shearer, namely the importance of the concept of negligence as the basis of liability. Underwriters in many countries are very often unwilling to write Shipowners Liability insurance for several reasons. For example: (1) the underwriters whom I ask to underwrite the liabilities, are already committed as underwriters of the physical hull and cargo. They may therefore be unwilling to expose themselves to further financial commitments on the same venture; (3) they also dislike the long period of delay before settlement of liability claims is reached. Working as they do on an annual or triennial basis, the possibility of claims being outstanding for as long as ten years has a bearing on the "line" they are prepared to write on such risks.

When it is possible to persuade underwriters to accept part of the reinsurance contract, the most important considerations in their minds in assessing the cost are the amount to which a shipowner can, in normal circumstances, limit his liability under the existing law, and the fact that such liability is based on fault or negligence.

It was these two facts which were uppermost in Underwriters' minds when, as instructed by the London Group, I approached them to discuss the matter of oil pollution in the last few months. Two points emerged; any alteration in the existing laws on limitation, or liability based on negligence would severely restrict the amount of coverage obtainable

and would severely increase its cost. I have most carefully discussed the matter with the leading underwriters of this type of risk, and while only a placing can show the exact position, it was their unanimous opinion that the maximum limit would be in the region of \$10–\$15 million each accident each vessel. Let me summarize the reasons again:

(i) The sweeping away of the normal underwriting criteria for such risks, namely, negligence as the basis for liability and the right to limit such liability to a reasonable figure in the absence of privity.

(ii) The heavy involvement in the other interests affected by a major casualty, namely the ship and cargo.

(iii) The heavy involvement by way of the reinsurance I already place on other liabilities stemming from the same casualty, e.g. removal of wrecks, etc.

(iv) The fact that their commitment is calculated on an "each vessel, each accident" basis. Thus they could have a large loss on the policy many times over in each year.

I must tell you that the capacity of the Market to absorb such risks is diminishing; this is because Underwriters have suffered severe losses on this and other types of business. The general tendency of legislators and courts alike has been to impose increased burdens

of liability upon Shipowners both in type of liability and amount of award. This has led Underwriters to regard the risk of insuring against Shipowners' Liabilities as increasingly heavy, demanding not only high premiums but also a more restricted participation in such risks by each individual Underwriting Association. The legislation which you propose is uninsurable because there is no limitation at all on the liability thus placed on shipowners. What I am saying is, gentlemen, that the present placing of reinsurance on behalf of the London Group and the Scandinavian P. & L. Associations absorbs world capacity; there is no other market to which we can turn for the unlimited liabilities which the Bill seeks to impose upon the Shipowners.

As stated earlier, I have discussed the matter most carefully with Leading Underwriters for this type of risk. Their opinion was unanimous, namely, without limit on the liability of shipowners it was uninsurable and even if partially insurable, the costs they indicated to me were such that it was evident that no shipowner could afford to trade his vessel where he would be exposed to such high additional costs.

I can, however, confirm from my talks in the market that Mr. Shearer's suggestion of some figure around \$100 per gross registered ton, subject to a ceiling of \$12,000,000 to \$15,000,000 would probably be insurable. At least I have now actually placed a contract based upon \$100 per gross registered ton, with a ceiling of \$10,000,000.

Appendix B

*In the absence of Mr. Shearer, the following statement was submitted by Mr. Peter N. Miller.*

STATEMENT OF JOHN C. J. SHEARER,  
PARTNER, THOS. R. MILLER & SON,  
MANAGERS OF THE UNITED KINGDOM MUTUAL  
STEAMSHIP ASSURANCE ASSOCIATION LIMITED  
BEFORE THE SENATE COMMITTEE ON TRANSPORT  
AND COMMUNICATIONS  
FEBRUARY 27, 1969

STATEMENT OF J. C. J. SHEARER, LONDON INSURANCE EXECUTIVE

Mr. Chairman and Gentlemen:

Thank you for your kindness in permitting me to submit a statement on Section 24 of Bill S-23. I regret that I am unable to make this statement in person but my colleague, Mr. Peter Miller, has full authority to act on my behalf.

I am a Partner in the firm of Thos. R. Miller and Son, the managers of the United Kingdom Mutual Steam Ship Assurance Association Ltd. 14-20, St. Mary Axe, London, E.C. 3, England. I have been engaged in the management of that Association for seventeen years. I am also a Partner in the firm of Thos. R. Miller and Son (Bermuda), the managers of the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, which Association commenced business on 20th February, 1969.

The two United Kingdom Associations referred to above are associated with a number of mutual protection and indemnity Associations which are often collectively referred to as the London Group of P. & I. Associations.

The other Associations which comprise the London group are:—

The Britannia S.S. Insurance Association Limited;

The London S.S. Owners Mutual Insurance Association Limited;

The Newcastle Protection and Indemnity Association;

The North of England Protecting and Indemnity Association;

The Standard S.S. Owners Protection and Indemnity Association Limited;

The Steamship Mutual Underwriting Association Limited;

The Sunderland Protecting and Indemnity Association;

The West of England Steamship Owners Protection and Indemnity Association Limited.

This statement is made on behalf of all of the mutual Shipowners Protection and Indemnity Associations designated above, and I would like to thank you on behalf of those Associations for being given the opportunity to appear before you.

Apart from the London Group, I am also authorized to represent the Scandinavian P. & I. Associations, namely Assurance Foreningen Gard, of Arendal, Norway, Assurance Foreningen Skuld, with a head office in Oslo, Norway, and Sveriges Angfartygs Assurans Forening, of Gothenburg, Sweden.

These British and Scandinavian Associations mutually insure Shipowners of various nationalities, owning tonnage approximating 140 million gross registered tons—about 70% of the world's tonnage—including over 4 million tons of United States flag shipping as well as practically the whole of the Canadian Lake fleet and the few foreign-going Canadian vessels. For example, the United Kingdom P. & I. Association consists of 15 percent British flag tonnage and 85 percent tonnage of other flags. The Board of Directors of this Association is composed of 32 members of many nationalities. Included are vessels flying the flags of more than 60 maritime nations.

I should explain here, albeit briefly, the main function of the P. & I. Associations. In each Association, shipowners band together for a common purpose:—to share mutually in the payment of claims brought by third parties for which they may become legally



liable as a result of their common commercial purpose—the operation of ships.

What, then, are the liabilities in respect of which the Associations afford coverage? The more important are as follows:—

- a) Liability for loss of life and personal injury to passengers and crews;
- b) One-quarter of the shipowner's liability for collision damage, the remaining three-quarters being customarily covered by the hull Underwriters, who insure the owner against loss of, or damage to his vessel;
- c) Liability for loss of or damage to cargo;
- d) Liability to third parties for property damage;
- e) Liability for removal of wreck, etc.

It should be particularly noted that the Associations cover also any legal liability resulting from oil pollution.

I am appending to this statement a tabulation of all oil pollution claims exceeding £5,000 paid by the four largest P. & I. Associations, insuring 85 million tons of shipping, during the seven year period from 1960 to 1966, inclusive, the latest period for which such a tabulation is available. There were 29 such claims, and the payments totaled £869,652.

From the foregoing evidence, gentlemen, you will see that I speak as a representative of the most important insurers of shipowners' legal liabilities, and my colleague Mr. Miller is empowered to speak on behalf of the world insurance markets which, by re-insurance, support the coverage against such liabilities which the Associations provide.

In the usual case, the shipowner is liable only when fault is either proved or is self-evident and therefore admitted, and in all but the exceptional case, the shipowner is entitled to limit the amount of any such liability in respect of these claims.

The fact that international maritime law in general contains these two elements, namely, fault as the basis of liability, and the right to limit such liability in the absence of privity, is one of the main considerations upon which the assessment of P. & I. premiums is based.

As has already been indicated, all the members of a P. & I. Association included in the London and Scandinavian Group share mutually in the payment of claims incurred by one of their fellow members. As a Group, the Associations protect themselves by excess loss re-insurance coverage on the world insurance markets to the maximum amount obtainable; my colleague, Mr. Miller, will explain the details of these arrangements. Should a claim exceed the amount of this re-insurance protection, then it would fall back on the Group for payment; but the Group covers

members of the participating Associations against liabilities even beyond the re-insurance obtainable, only because of the extreme remoteness of the possibility of such an event, since to exceed the re-insurance protection, the claims would have to exceed the amount to which a shipowner could normally limit the amount of his liability under the existing laws of the world's maritime nations.

It is precisely because the law of every maritime country provides for a reasonable figure to which a shipowner can normally limit his liability, and because liability is generally based on the concept of negligence or fault on the part of the shipowner, that the cost to the shipowner—and ultimately, therefore, to the consumer of the goods carried by the shipowner—of the insurance of his liabilities can be kept to a reasonable figure, and that the traditional insurers of this liability, the P. & I. Associations, can offer unlimited insurance coverage for the exceptional case where it is needed.

It is because Section 24 of Bill S-23 violates these two fundamental principles of shipowners' liability insurance, i.e. negligence as the basis of liability and the right to limit any such liability in the absence of the owners' privity—that we earnestly ask you to reconsider certain aspects of this legislation.

If unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable.

I do not believe that the Directors of the P. & I. Associations forming the London Group would accept such unlimited liability. They would surely consider that the risk would be too great, and that, furthermore, it offended against the principle of mutuality in that all members would be asked to share in an absolute and unlimited risk assumed, in practice only by shipowners trading to and from Canada. The group would have to restrict its coverage to an amount for which it could reasonably burden its own resources supplemented by its re-insurances. This figure over a long period is perhaps between \$10 million and \$15 million, with respect to each vessel involved in any single accident. My colleague, Mr. Miller, will give evidence on this point.

The position, therefore, would be that shipowners would be uninsured in respect of liabilities in excess of, say, \$10 million to \$15 million. It is possible that the shipowning subsidiary companies of the major P. & I. companies might be able to assume liability for claims exceeding such a sum; quite frankly, I doubt it. But it is certain that the independent shipowning companies could not do this, and consequently, they would be unable to trade to and from Canada, unless they were prepared to do so partially uninsured.

The fact that legal liabilities are based on the concept of fault is a most important factor both in the cost of liability insurance and the amount of coverage which can be provided. Section 24 of Bill S-23 which



would impose absolute liability, without fault not even when the spillage was caused by an act of God, would lead to a very heavy burden of increased cost to shipowners trading with your country, with all the concomitant disruptive effects on such trade.

Moreover, I should like to point out that it is patently unfair that Section 24 of Bill S-23 would impose absolute and unlimited liability on a shipowner to the Canadian Government, because certain circumstances could arise where the owner whose ship was the source of the oil pollution, while being absolutely innocent in respect of the damage, would nevertheless be liable for it, without any adequate right of recovery against the party at fault.

For example:

(a) A properly anchored tanker may be damaged in collision by another vessel. The cleaning-up expenses might involve a catastrophic sum if the tanker was a large one. In these circumstances, the tanker owner would be compelled to pay the cost of the clean-up to the Canadian Government, but he would have a right of recovery from the offending ship only to the extent of that vessel's limit of liability under the provisions of the Canada Shipping Act permitting a shipowner to limit liability or if such provisions did not apply, the innocent shipowner might find the shipowner at fault uninsured for this type of liability and financially unable to meet it.

(b) Another example concerns oil pollution as the result of an act of war, and I do not think I need demonstrate the unfairness of imposing liability on an innocent shipowner in such circumstances.

You will observe that so far my evidence has been solely concerned with criticism of Section 24 of Bill S-23 in its present form. I now come to the question of proposing remedies for a situation which has not only given concern to the Canadian and United States Governments, but also other Governments, particularly the British Government, since the matter under consideration was highlighted by the unfortunate TORREY CANYON disaster two years ago. After that incident, the British Government immediately took action through the International Maritime Consultative Organization, commonly known as IMCO, which, as you are aware, is an agency of the United Nations on which the Canadian Government, as well as many others, is represented. IMCO decided that the proper body to investigate the position, particularly so far as concerns insurance and the legal questions, was the Comité Maritime International, known as the CMI, an organization of the national maritime law associations of some 29 nations, which has been instrumental in achieving a considerable degree of uniformity in international maritime law. Both CMI and IMCO have worked on the develop-

ment of a draft convention on liability for oil pollution which is, now in an advanced stage and which will be considered at the CMI meeting in Tokyo in March of this year and at the diplomatic conference which IMCO has proposed to be held in November. Both organizations have made positive recommendations and those which are of particular interest in the context of the present proposed legislation can be summarized as follows:—

- (1) A reversal of the burden of proof, i.e., a requirement that the shipowner be liable for damages resulting from oil spillage unless he can affirmatively prove that it was caused without his fault;
- (2) An increase in the limit of liability, within the structure of the 1957 Brussels Convention on Limitation;
- (3) The recognition of the right of governments to recover the cost of protective measures to prevent or minimize the effects of pollution, following a spillage, as well as the cleaning-up costs.

These recommendations would necessitate substantial changes in the present system of international maritime law. I should point out, in particular, that it is the legal opinion in many countries that as the law presently stands, there is grave doubt in many cases as to whether any government has the right to recover such costs. The Protection and Indemnity Associations for whom I speak support these proposals and earnestly hope that the Canadian Government will give consideration to delaying any legislation until Imco has made its recommendations to the respective governments. Unilateral legislation in a matter of this sort by any one government cannot assist the endeavors of IMCO to reach a conclusion acceptable internationally.

Although these recommendations, as I have said, would result in substantial changes in the law, they would nevertheless preserve the two essential principles of liability based on the concept of negligence and the right of limitation of that liability, where there is no privity. The P. & I. Associations support the recommendations because they accept that, as the law now stands, the position of governments in regard to oil pollution is not really satisfactory. They must be given the right to recover costs reasonably incurred by them in preventing or mitigating the damage caused by pollution—and the costs recoverable must not be unduly limited, but must be such as to give adequate protection save only in the quite exceptional case.

The assumption of an additional risk of this nature would, as I have earlier pointed out, result in higher premiums, but it would nevertheless be insurable.

The Protection and Indemnity Associations to which I refer usually afford unlimited coverage, but

such coverage is granted only because the law of every maritime country provides for a reasonable figure to which a shipowner can normally limit his liability. If the liability of the shipowner under the proposed legislation is to be unlimited, re-insurance would be unobtainable. In these circumstances, my Group would be unwilling to grant insurance coverage.

While it would impose an additional burden on shipowners, I am satisfied that coverage for this type of liability could be provided by the P. & I. Associations and their Re-Insurance Underwriters at a realistic cost, provided the limit did not exceed a figure in the neighbourhood of \$100.00 per gross registered

ton and the ceiling did not exceed a figure between \$12,000,000.00 and \$15,000,000.00.

May I, therefore, respectfully suggest, Mr. Chairman and Members of the Committee, that some formula on these lines be introduced in this Bill in the place of the provision which I have mentioned.

Finally, I would say how much we sympathize with the general provisions of the Bill which has been introduced, and I am most grateful that you have given me the opportunity to criticize it on certain narrow points which the Associations I represent believe the commercial community would find unduly burdensome. I trust you will consider the Associations' proposals reasonable and acceptable.

## Appendix C

STATEMENT OF JEAN BRISSET, Q. C.  
BEFORE THE SENATE COMMITTEE ON TRANSPORT  
AND COMMUNICATIONS IN CONNECTION WITH BILL S-23,  
AN ACT TO AMEND THE CANADA SHIPPING ACT

Mr. Chairman and Honourable Senators:

My name is Jean Brisset; I am one of the Senior Partners of the firm of Beauregard, Brisset & Rey-craft, Advocates, of Montreal.

I appear before you on behalf of the International Chamber of Shipping and the Canadian Chamber of Shipping.

The International Chamber of Shipping, which was established in 1921, is a body primarily concerned with international relations and in the field of international shipping its primary objective is to formulate the views of the shipping industry as a whole on all questions of major policy; it comprises the national Shipowners Associations of 19 countries, including Canada, together representing 65% of the world's active tonnage. The Canadian Chamber of Shipping is a constituent member of the International Chamber of Shipping and amongst its own constituent members includes:

The Shipping Federation of Canada

The Canadian Shipowners Association

The Chamber of Shipping of British Columbia

The British Columbia Towboat Owners' Association.

The Shipping Federation of Canada, incorporated in 1903, is an association of owners and operators of vessels trading from overseas to Eastern Canadian Ports, St. Lawrence River Ports and Canadian and U.S. Great Lakes Ports. It includes in its membership the great majority of the firms which, in Eastern Canada, operate overseas shipping services or act as agents for foreign shipping lines. The British Columbia Chamber of Shipping is a similar association of vessel operators and agents on the West Coast.

The vessels of the Lines which the Members of these Associations either own, operate or represent, carry practically the whole of Canada's overseas exports and imports.

May I first of all on behalf of the Associations which I represent express to you my sincere thanks for being afforded the privilege of appearing before you and of submitting the views of these Associa-

tions on these clauses of Bill S-23 which deal with the liability of vessels for pollution of our waters, namely Clauses 23 and 24.

All of the Associations represented here have directed me to respectfully suggest that serious consideration be given to the withdrawal of Clause 24 of Bill S-23 for the very reason that it deals with a problem which eventually will be, as it should, the object of International Conventions which have already been given extensive study by the International Maritime Consultative Organization known as "IMCO" to which Canada is a party and in whose deliberations Canada has taken a very active part, and by the Comité Maritime International ("CMI") on which Canada is also represented. The proposed Conventions will be considered at a Diplomatic Conference in November of this year which no doubt will be attended by representatives of the Canadian Government.

The International Chamber of Shipping has prepared a statement which develops the reasons for the above suggestion and with your permission I would like to read it at this stage so that it will form part of the record.

The Chamber of Shipping of the United Kingdom has, I understand, in an Aide-Memoire delivered to the Canadian High Commissioner in London made similar representations and no doubt this Aide-Memoire will be made available to your Committee.

If the Canadian Government is not prepared to consider favourably the withdrawal of Clause 24, then the Associations which I represent, although in complete sympathy with the aids sought to be attained, namely prevention of pollution by wrecked vessels and recovery by the Government of its expenses to prevent such pollution or clean it up, are desirous to go on record as opposing the legislation in its present form for the following reasons:

1. Because it imposes a liability without fault, in other words, an absolute liability;
2. Because it imposes a liability unlimited as to amount and, therefore, uninsurable as such;
3. Because it imposes such liability on charterers of vessels even where they are in no way respon-



sible for the navigation or management of the vessel from which the polluting matter might escape.

May I be permitted to deal with each of these three points in that order and if I am able to convince your Committee along with the others who will appear before you that they are well taken, then to suggest the possible amendments which may help in correcting the iniquities which we feel exist in the legislation now before you.

Before doing so, I would like to bring to your attention the fact that somewhat similar legislation was introduced in the United States some two years ago but as a result of the representations made by the interests affected, amongst others the American Merchant Marine Institute, the American Petroleum Institute, the Lake Carriers' Association, the American Maritime Law Association and others, the proposed legislation was considerably overhauled and the Bill introduced earlier this year before the United States Senate, namely Bill S 7, and the concurrent Bill, S 544, to amend the Federal Water Pollution Control Act and in respect of which hearings were held in early February before the Subcommittee on Air and Water Pollution of the Committee on Public Works of the United States Senate, does recognize the three principles which we are advocating before you, namely:

1. That there should be no liability without fault;
2. That there should be a limit to the ship-owners' liability;
3. That as regards the charterer, the liability should only rest on one who is responsible for the navigation and management of the vessel.

It must be said that the limit set under the United States Bills S 7 and S 544 is quite high, namely \$450.00 per registered gross ton of the vessel's tonnage, or \$15,000,000.00, whichever amount is the lesser, but strong representations were made to have it reduced to \$67.00 per ton, or \$5,000,000.00, whichever amount is the lesser, the figure of \$67.00 being intended to bring the limit in consonance with the dispositions contained in the Brussels' Convention of 1957 on the limitation of the liability of owners of vessels, to which Convention Canada adhered and which it implemented in its national legislation by amending the Canada Shipping Act in 1961 (Articles 657 and following). Although I am reliably informed that a realistic reduction may be made in the eventual amount of the limit of liability foreseen under the proposed United States legislation, it is too early to say what such reduction might be as the Bill has not yet been reported out of Committee.

It is not necessary for me to stress that in view of the considerable international trade between the United States and Canada, particularly on the Great Lakes, that there should be uniformity in the legisla-

tion of both countries on the subject with which we are now concerned.

# I

That there should be liability without fault is, of course, contrary to all recognized principles of justice in democratic countries and only exceptional circumstances could possibly justify a departure from this principle.

It has been said, however, that, for instance, even though the operator of a tanker may not be at fault if under circumstances involving an Act of God or the fault of another vessel which strikes her, oil escapes from its tanks and pollutes our waters, still it is the owner of the tanker who created the possibility of such a risk of pollution by bringing his vessel into a Canadian port and it would be unfair for the innocent tax-payer to bear, through his Government, the expenses of cleaning up; on the other hand, it should be kept in mind that when ships, like tankers, are carrying on essential commercial activities, like the carriage of oil, the users of the commodity, i.e. the nation at large, are also involved and should assume the risk which their needs have equally created.

It is recognized that there already exists in our maritime legislation in Canada provisions under which liability is imposed on a vessel owner without any concomitant fault, namely, a liability for the cost of the removal of the wreck of a vessel which constitutes an obstruction to navigation in our navigable waters. This disposition is to be found in the Navigable Waters Protection Act and Clause 24 of Bill S-23 is apparently patterned on this legislation, although it goes further and imposes liability under sub-Section (e) of Section 495D even where the vessel is not in distress, stranded, wrecked, sunk or abandoned.

However, we submit that the position from a practical point of view is not quite the same, principally because, from past experience, the cost of the removal of a wreck as an obstruction to navigation without the additional factor of pollution has not proven to be and is not likely to be of such proportion as could possibly be the cost of removing or destroying a vessel coupled with the cost of cleaning up the polluting matter which has escaped from such vessel. Whereas the cost of the former has been insurable, it is doubtful that the second could be on the basis of absolute liability.

To solve the first problem which is related to the liability for the removal or destruction of a vessel in distress, stranded, wrecked, sunk or abandoned or on its cargo or fuel when likely to cause or causing pollution, it is suggested that Section 495C of Clause 2 be amended as follows:

"495C (1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned—



- (a) is polluting or is likely to pollute any Canadian waters,
- (b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,
- (c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct."

The purpose and the advantage of the proposed amendment are twofold:

1. It will allow an owner and his underwriters to take the measures necessary to avoid the pollution or clean it up if it has occurred, instead of incurring the risk of having the vessel destroyed or removed and sold and will, therefore, prove to be an incentive for those concerned to use all their resources with the assistance in case of an oil pollution, possibly from the industry itself in view of its interest in these matters.
2. It will in case of an oil pollution serve to attain the objective of the plan known as "TOVALOP".

To explain this plan, I would like to take the liberty of quoting from the statement of the representative of the American Petroleum Institute before the sub-Committee on Air and Water Pollution of the Committee on Public Works of the United States Senate dated February 4th, 1969.

"Earlier I mentioned that tanker-owning affiliates of certain major oil companies have initiated an international voluntary plan designed to encourage swift action in effecting the removal of oil discharges. This voluntary plan has a threefold objective:

1. To provide an incentive for a shipowner to act promptly if an oil spill occurs.
2. To indemnify national governments for the reasonable costs they incur in containing or removing oil spills off their coastlines if the tanker owner either does not or cannot act.
3. To assure the availability of funds to meet these objectives. The plan has a shorthand title, "TOVALOP", which stands for "Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution".

Briefly, TOVALOP provides that a participating tanker owner will reimburse national govern-

ments for expenses reasonably incurred by them to prevent or clean up pollution of coastlines that results from negligent discharge of oil from one of his tankers. The tanker causing the discharge is presumed to be negligent unless the owner can establish that the discharge was not the tanker's fault.

In the event of a negligent discharge of oil, where the oil pollutes or causes grave and imminent danger of pollution to coastlines, within the jurisdiction of a national government, the tanker owner involved is obligated to reimburse the national government concerned for the oil removal costs it reasonably incurs, up to a maximum of \$100 per gross registered ton of the tanker discharging the oil, or \$10,000,000., whichever is the lesser.

TOVALOP also contains provisions for reimbursing a tanker owner for any expenses reasonably incurred by him to prevent or clean up pollution from a discharge of oil. These provisions are designed to encourage a tanker owner to take prompt action to remove spilled oil or mitigate pollution damage.

TOVALOP will be administered by a limited company registered in England and headquartered in London. It is called "The International Tanker Owners Pollution Federation Limited", and each tanker owner who becomes a party to TOVALOP will be a member of this Federation. TOVALOP requires each participating tanker owner who becomes a party to establish and maintain sufficient financial capability to fulfill his contractual obligations. The parties to TOVALOP have made provision to establish their financial capability by forming another limited company and called "The International Tanker Indemnity Association Limited". This Association will provide insurance coverage for all tankers owned by the parties to TOVALOP, and thus assure that they will be able to fulfill their financial obligations.

Any tanker owner in the world can at any time become a participant in TOVALOP. Tanker owners owning at least 50 per cent of the dead-weight tonnage in the world (excluding tankers owned by governments or government agencies and tankers of under 5,000 dead-weight tons) must become parties before the principal obligations of participating owners and TOVALOP itself become fully effective, and TOVALOP will lapse if owners representing 80 per cent of the world's dead-weight tonnage (with the exclusions just mentioned) do not become parties at the end of two years after its effective date.

In the case of any disputes a national government can enforce the liability of a tanker owner

who is a party to TOVALOP through arbitration under the rules of the International Chamber of Commerce. This latter feature should avoid the problems of establishing jurisdiction and effecting collection which exist at present in maritime law and practice."

I have here with me a copy of the booklet containing the text of the agreement as well as the Articles of the Association of the two organizations and I will be pleased to leave it with you for reference purposes.

## II

That as a general rule the liability of the owner of a vessel, even in case of negligence provided there was no personal fault or privity on his part, be limited is in line with the policy adopted by all maritime nations including Canada, which policy has for purpose to foster maritime commerce as a matter of national interest, a commerce which is vital for Canada and for the continuity of which it depends almost exclusively on foreign ships for its overseas trade.

As stated earlier, Canada adhered to the 1957 International Convention on Limitation of Liability of Owners of vessels and by legislative action in 1961, it implemented this Convention in its national legislation thereby increasing considerably the limit of a Shipowner's liability for property damage, which up to then was only \$38.92 per ton. Such limit of liability under Section 657 of the Canada Shipping Act as amended in 1961 is now 1,000 Gold Francs per ton which, at the current rate of exchange, are equivalent to roughly \$71.50. It recognizes the principle that a Shipowner would not be liable beyond such limit unless there was personal fault or privity on his part.

The Associations which I represent feel that such principle should be preserved in the present legislation along with that of no liability without fault insofar as it concerns the expenses incurred by the Canadian Government of the nature of those detailed in Section 495D.

It is, therefore, strongly recommended that the following amendment be made to this Section:

"495D. All *reasonable expenses less proceeds of sale as provided under sub-Section (2) of Section 495C.* incurred by

- (a) the Minister in removing, destroying or selling a vessel, its cargo or fuel pursuant to Section 495C,
- (b) Her Majesty in preventing the spreading of any cargo or fuel that has escaped or been discharged from a vessel, and

- (c) Her Majesty in cleaning any property fouled by any cargo or fuel that has escaped or been discharged from a vessel,

shall constitute a debt due to Her Majesty by

- (d) the person or persons whose negligent act or fault, or whose servants' negligent act or fault caused the distress, stranding, wrecking, sinking or abandoning of the vessel, or the escape or discharge of the cargo or fuel from the vessel."

In case of a collision between two vessels for which liability is apportioned between them, the liability of each vessel for such expenses shall be in the same proportion as that of their respective negligence.

The liability imposed by this Section shall be limited to an aggregate amount equivalent to 1,000 Gold Francs per registered gross ton or the equivalent in Canadian dollars of \$5,000,000.00 (U.S.), whichever is the lesser, whenever the person applying for such limitation establishes that he comes within the ambit of the dispositions contained in Articles 657 to 663 of the Canada Shipping Act.

In any action instituted by Her Majesty under this Section, evidence of a discharge of pollutant matter from a vessel shall constitute a *prima facie* case of liability on the part of the Owner or Demise Charterer of such vessel and the burden of rebutting such *prima facie* case shall be upon such Owner or Demise Charterer."

May I respectfully point out at this stage to this Committee that the amendments proposed in this Section take into account the following:

1. That the amount of the limit of liability recommended is in line with that recommended by the following, amongst others, at the hearings held before the sub-Committee on Air and Water Pollution of the Committee on Public Works of the United States Senate in early February:

The American Institute of Merchant Shipping  
The American Maritime Association  
The Insurance Brokers Association  
The Lake Carriers' Association

2. The apportionment of liability in relation to the degree of fault is in line with the principle given effect to by Section 648 of the Canada Shipping Act, which itself gave effect to the provisions of the Brussels Convention of 1910 on Collisions.

3. The reversal of the burden of proof is in line with the proposed International Convention under which such a reversal is contemplated.

4. That in the case of a serious casualty resulting in the possibility of pollution of Canadian waters for instance, following a collision between two



vessels, the vessel at fault, or each of them if they are both to blame but are entitled to limit liability, will have to make available to claimants including the Canadian Government two limited funds:

- A) one to provide for reimbursement to the Canadian Government of the expenses it may have incurred to prevent the pollution or clean up the polluted matter, which fund will be calculated on the basis indicated here if our recommendation is accepted, and,
- B) a second one to provide compensation for all other claimants calculated in accordance with the provisions of the Canada Shipping Act on the topic of limitation of liability, namely 1,000 Gold Francs per ton for property damage claims, or 2,100 Gold Francs per ton if there are also claims for personal injuries and/or loss of life.

Thus, to quote dollar figures, in the case of a collision between a tanker of a registered gross tonnage of 120,000 tons and a limitation tonnage of 100,000 tons when calculated under the provisions of Section 662 of the Canada Shipping Act, and a dry cargo ship of a registered gross tonnage of 12,000 tons and a limitation tonnage of 10,000 tons under Section 662 of the Canada Shipping Act, the Owners of such ships will be liable to put up the following funds:

#### 1. IN THE CASE OF THE TANKER

- (a) To cover the Government's expenses -

$$120,000 \text{ tons} \times \$71.50 = \$8,580,000.00 \text{ (Can.)}$$

which figure, however, has to be reduced to the lesser figure corresponding to the equivalent in Canadian dollars of \$5,000,000.00 (U.S.)

- (b) To cover all other claims -

- (i) Property damage claims:

$$100,000 \text{ tons} \times \$71.50 = \$7,150,000.00 \text{ (Can.)}$$

- (ii) If there are both property damage claims and claims for loss of life or personal injury:

$$100,000 \text{ tons} \times (2.1 \times \$71.50) = \$15,015,000.00 \text{ (Can.)}$$

#### 2. IN THE CASE OF THE DRY CARGO SHIP

- (a) To cover the Government's expenses -

$$12,000 \text{ tons} \times \$71.50 = \$858,000.00 \text{ (Can.)}$$

- (b) To cover all other claims -

- (i) If there are only property damage claims:

$$10,000 \text{ tons} \times \$71.50 = \$715,000.00 \text{ (Can.)}$$

- (ii) If there are both property damage claims and claims for loss of life and personal injury:

$$10,000 \text{ tons} \times (2.1 \times \$71.50) = \$1,501,500.00 \text{ (Can.)}$$

We would also like you, however, to consider the problem raised in the case of an accident resulting in the pollution of both Canadian and United States waters, a possibility which, of course, cannot be ignored, particularly in the case of ships plying the International Waters of the St. Lawrence River and the Great Lakes. Unless there is an agreement between the two Governments of the nature envisaged under the proposed International Convention now before IMCO and CMI, the ship involved in such pollution would be liable to provide two funds, one to each Government.

The Convention provides in this case that if pollution damage occurs in the territory or territorial waters of more than one contracting state, and actions are brought in the Courts of more than one contracting state, the owner may pay the limitation fund into the Courts or other competent authorities of any such state. After the fund has been constituted in accordance with this Article, the Courts of the state where the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

We would respectfully suggest that if the present legislation is enacted but with the right to limit liability, a recommendation be made to the Canadian Government to look into the possibility of reaching an accord with the United States Government to avoid the inequitous results that would follow from dual liability.

#### III

If it is considered that liability without fault should remain as the basic principle for the present legislation, then we strongly urge that sub-Section (d) of Section 495D be amended to define the Charterer as the one responsible for the navigation of the vessel, i.e. a Demise Charterer, so as to remove the liability which under the present wording would lie on a Time or Voyage Charterer who would have had nothing to do with the navigation or management of the vessel responsible for the pollution. We have been assured by Officers of the Department of Transport that such an amendment would be proposed before your Committee and that the absolute liability or liability without fault would also be removed from the shoulders of the Master of the vessel by deletion of the Word "Master" from this Section; therefore, we will not comment further on these particular features. We would strongly urge, however, that when the vessel is operated under Demise Charter, that is by a Charterer who has the responsibility for the navigation and management of the vessel, the liability foreseen be imposed solely on such Charterer.

Counsel in Vancouver for the British Columbia Towboat Owners' Association, Mr. D. Brander Smith of Messrs. Bull, Housser & Tupper, in a letter which he wrote to the President of the Association on the 29th of January, 1969 expressed himself as follows:

There is another aspect of the proposed legislation which will affect many of your members, and that is that they as individuals own barges which they charter out on a long term basis to other towing companies, the towing company being entirely responsible under the terms of the Charter Party to maintain the barge. Some individual owners are executives of towboat companies, but many others are in entirely unrelated businesses, and are in no way engaged in or knowledgeable about the business of operating barges. These owners have been encouraged to build barges by the favourable subsidies and depreciation allowances specially designed as a stimulus to the shipbuilding industry. In my view, it seems harsh to impose upon these owners now an arbitrary responsibility as owner, whether or not they have any control whatsoever over the maintenance, navigation or management of the vessel.

In my view responsibility for these expenses should be attached only to the persons who are in control of the navigation, management or operation of the vessel, or whose act caused the damage, and should not be attached to persons who have no operating control of the vessel."

I would, therefore, urge you to give your sympathetic consideration to the representations made on behalf of this particular industry.

In conclusion, may I reiterate that the Associations now appearing before you and which represent the major proportion of the world's shipping industry all consider that the enactment of Clause 24 should be deferred for further consideration. If your Committee is not prepared to so recommend, then we trust that the amendments which we have proposed will receive your favourable recommendation.

THE WHOLE RESPECTFULLY SUBMITTED.

February 27, 1969.

The ICS appreciates the anxiety felt by coastal states throughout the world at the threat of oil pollution and can well understand the wish of the Canadian Government to have suitable legislation dealing with its power to take action in an emergency and with the problem of liability.

The primary aim of shipowners, as of governments has been to avoid shipping casualties which could cause pollution, and the Committee will have heard of the work that has been done at IMCO and elsewhere on this subject. A particularly constructive development has been the establishment of recommended traffic separation schemes to reduce the risk

of collision in congested waters. It is worth mentioning that the International Chamber of Shipping not only participated in drawing up such schemes for IMCO's approval, but urged its members to implement them at once without waiting for their formal adoption by the IMCO Assembly. Such schemes can lead to a reduction in collisions and if the Canadian Government favours a traffic separation scheme, for example on the Pacific Coast, the ICS would put at the disposal of the Government its experience of similar schemes elsewhere.

Action taken by IMCO to make certain navigational aids compulsory may also help to reduce the risk of casualties, but will not completely eliminate them. For this reason the ICS supports IMCO's proposal to have a Diplomatic Conference in November to consider two conventions on legal aspects of oil pollution. One of these conventions, that on the powers of coastal states, is already in its final draft form, and the other, on liability for oil pollution, has reached an advanced stage.

The convention on the powers of coastal states is a most important one. It empowers a coastal state, in the event of a grave and imminent danger, to take action on the High Seas, action which could even include the destruction of the ship and cargo. Such a breach in the freedom of the High Seas has caused much heart-searching by shipowners. The freedom of the High Seas is not an academic legal concept but a practical principle vital to the smooth operation of the world's seaborne trade. Accordingly the member-governments of IMCO have accepted that this right of a coastal state to interfere with foreign shipping should be strictly defined. The draft convention, therefore, makes it clear that there must be grave and imminent danger and that any action taken must be proportionate to the harm threatened. There is, moreover, another article the effect of which is that if the danger is not grave and imminent, or if the action is not proportionate, compensation shall be payable by the coastal state.

It is not settled whether this convention should apply also within territorial waters. The freedom of the High Seas is matched by the right of innocent passage in territorial waters and world shipowners believe that in this matter the same principles should apply in both places. The right of innocent passage is an ancient one but it was re-defined in a convention passed in 1958 which has received widespread ratification by countries as varied as the United States and the U.S.S.R., Australia and Nigeria.

The IMCO draft convention on liability for oil pollution has not reached the same stage as the public law convention, but already it is apparent that there is a general agreement that liability should be solely on the shipowner, that it should not be absolute, and that it should not be unlimited. It is understandable that IMCO's member-governments appear to be



unanimous on the need for such a convention. There are over one hundred coastal states in the world, and IMCO's work clearly acknowledges that this worldwide problem needs a worldwide solution.

It may be worth explaining the practical reasons for an internal solution. Some ships are specially built for particular trades, but others, notably tankers and dry cargo tramps, are not. They go where the cargo is, provided it is profitable for them to do so. Two of the elements in their costs are (i) hull insurance, and (ii) protection and indemnity (or P & I) insurance, that is, in essence, insurance against shipowner's liabilities to third parties. If a ship is liable to be destroyed without compensation for no better reason than that it may interfere with the enjoyment of coastal property, then insurance rates may be affected. It is even more certain that the cost of P & I cover would rise if the shipowner was made liable for oil pollution even if he was the innocent victim of a collision or had struck an uncharted hazard. Such extra costs will be passed on and it is the Canadian shipper and consumer who will be required to pay them. There is one exception; if the shipowner's liability for oil pollution was in fact unlimited, it would not be possible to obtain any insurance. Ships would either sail to Canada without insurance against their liability for oil pollution, or would not sail there at all. Legislation providing for unlimited liability would therefore be self defeating.

This means that the interests of Canada as an important trading nation require that legislation on oil pollution should strike a balance between the Government's wish for compensation for oil pollution and its wish to have its cargo carried at the lowest possible cost.

This is the problem facing all nations. It is a difficult one, but an answer is emerging and within a few months it will be clear exactly what solution has general approval. It must be rare to bring forward legislation so shortly before a Diplomatic Conference called to consider an international convention on the same subject. To proceed with it would seem to face Parliament with the likelihood of having to pass amending legislation within months of a new Bill's enactment.

For all these reasons, the International Chamber of Shipping strongly recommends that the Canadian Government withdraws *Clause 24* of Bill S-23.

From what has already been said, it will be clear that international shipowners are in sympathy with the principle of regulating operational pollution, and thus with the idea behind the proposal in *Clause 23* to extend the power to issue regulations to cover forms of marine pollution other than oil. The difficulty is practical and real. In an existing ship, to fit new equipment is a very expensive matter; in the case of a passenger ship sewage retaining equipment could cost millions of dollars and there would be a

smaller, but still high expense, for dry cargo vessels. It may be worth mentioning that, in international conventions concerning ship construction, it is customary to apply requirements only to new ships. While regulations can and should distinguish between new and existing vessels, to do so does not solve all the problems. If one country has special requirements for the ships that serve its ports, the owners of tramps which do not regularly call at them may decide not to fit such equipment. If they do not, the pool of vessels able to serve that country is smaller, and freight rates tend to reflect the fact. Owners regularly serving the country will perforce install the equipment if they wish to carry on trading as before, but the cost will inevitably be passed on to the customer. Should the Canadian Government conclude that, in spite of these practical problems, regulations are essential, shipowners would be willing to discuss with the Government's experts what is technically and economically feasible.

The ICS appreciates that no two countries' pollution problems are identical, and that Canada's extensive coastline and important freshwater highways present peculiar difficulties. It would therefore be willing to discuss, not only these, but any other proposals that the Canadian Government may have for avoiding, reducing or compensating for pollution damage.

Canadian interest in IMCO's work has long been evident to other countries, and shipowners support its action in seeking international solutions to international problems. They believe that oil pollution is just such a case and hope that the Canadian Senate will view S-23 in this light.

12.2.69.

## INTERNATIONAL CHAMBER OF SHIPPING

### LIST OF MEMBER COUNTRIES

AUSTRALIA  
BELGIUM  
CANADA  
DENMARK  
FINLAND  
FRANCE  
WEST GERMANY  
GREECE  
INDIA  
ITALY  
JAPAN  
NETHERLANDS  
NEW ZEALAND  
NORWAY  
SPAIN  
SWEDEN  
SWITZERLAND  
UNITED KINGDOM  
UNITED STATES

## Appendix D

## THE SHIPPING FEDERATION

## OF CANADA

## INCORPORATED

326 BOARD OF TRADE BUILDING

MONTREAL 1

## REGISTERED

File: LS, 18 - 26

February 20, 1969.

The Honourable Paul T. Hellyer, B.A.  
Minister of Transport,  
Department of Transport,  
Hunter Building,  
Ottawa, Ontario.

Bill S-23 - Clause 7 - Pilotage

Honourable Sir:

Our members are most anxious that I should bring to your attention one particular clause of Bill S-23 which has had Second Reading before the Senate and been referred to the Standing Committee on Transport and Communications whose hearings have been set for February 27th. This clause is intended to preserve the "status quo" in the administration of pilotage services across Canada pending action being taken on the implementation of the Report of the Royal Commission on Pilotage. This objective, it is considered, will be achieved by giving validity for the interim period to the various pilotage by-laws and regulations whenever the Commission has raised doubt on such validity or the Courts have found such by-laws in fact to have been illegally enacted.

Although I would like to confirm that our Members as users of pilotage services across Canada have agreed to support such legislation, I must point out respectfully that contrary to what was stated in the Senate on January 21st, 1969, our Members had not agreed that this remedial legislation should remain in effect until December 31st, 1969 and that it could

be further extended without formality as the clause, as it now reads, seems to imply.

At the last meeting held in Montreal with officers of your Department and attended not only by our representative but also by representatives of the Dominion Marine Association and the Canadian Chamber of Shipping, it was made quite clear on behalf of those Associations that the life of the remedial legislation could only be extended beyond March 31st, 1969 by an Order in Council which would have to be tabled in and approved by Parliament before it could become effective, and reference was had by analogy to the safeguards contained in the Maritime Transportation Unions Trustees Act in connection with the extension of the trusteeship by Order in Council.

We realize, of course, that the date of March 31st, 1969 is now very near and that extension may be necessary; however, I have been asked to stress again that in our view such extension should be limited and all further extensions should be subject to the control of Parliament.

We propose to raise this matter before the Committee of the Senate but felt that we should advise you of our position beforehand so that you might give it your serious consideration.

I am, Sir,

Yours respectfully,

HC:nl

H. Colley  
PRESIDENT



















First Session—Twenty-eighth Parliament  
1968-69

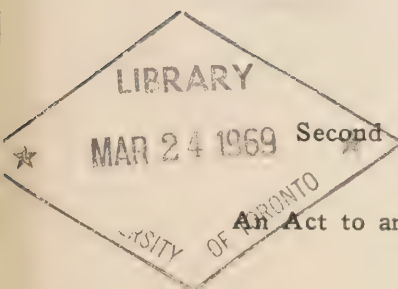
THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
STANDING COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

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No. 7

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Second Proceedings on Bill S-23,  
intituled:

An Act to amend the Canada Shipping Act.

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THURSDAY, MARCH 6, 1969

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WITNESSES:

*Pacific Hovercraft Ltd*: John P. Nelligan, counsel; P. Barry Jones, President; *Dept. of Transport*: Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch; *Hoverwork Canada Ltd*: A. B. German, President. *Canadian Chamber of Shipping*: Jean Brisset, Q.C., counsel; Peter N. Miller, insurance executive.

THE QUEEN'S PRINTER, OTTAWA, 1969

SENATE COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS  
The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine	Hollett	Molson
Blois	Isnor	O'Leary ( <i>Antigonish-</i> <i>Guysborough</i> )
Bourget	Kinley	O'Leary ( <i>Carleton</i> )
Burchill	Kinnear	Pearson
Connolly ( <i>Halifax</i> <i>North</i> )	Langlois	Petten
Davey	Lefrançois	Rattenbury
Denis	Macdonald ( <i>Cape</i> <i>Breton</i> )	Smith ( <i>Queens-</i> <i>Shelburne</i> )
*Flynn	*Martin	Sparrow
Fournier ( <i>Madawaska-</i> <i>Restigouche</i> )	McElman	Thorvaldson
Gladstone	McGrand	Welch—(30)
Hayden	Michaud	

\*Ex Officio member

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intituled: An Act to amend the Canada Shipping Act.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, March 6, 1969.

Pursuant to adjournment and notice the Senate Committee on Transport and Communications met this day at 10.00 a.m.

*Present:* The Honourable Senators Thorvaldson *Chairman*, Aseltine, Blois, Burchill, Denis, Flynn, Hollett, Isnor, Kinley, Kinnear, Langlois, Lefrançois, Macdonald (*Cape Breton*), McElman, McGrand, Pearson, Petten, Robichaud and Smith (*Queens-Shelburne*). 19.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Consideration of Bill S-23, "An Act to amend the Canada Shipping Act", was resumed.

The following witnesses were heard:

*Pacific Hovercraft Ltd:* John P. Nelligan, counsel; P. Barry Jones, President.

*Dept. of Transport:* Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch.

*Hoverwork Canada Ltd:* A. B. German, President.

*Canadian Chamber of Shipping:* Jean Brisset, Q.C., counsel; Peter N. Miller, insurance executive.

The following documents were ordered to be printed as appendices:

E. Submission by P. Barry Jones.

F. Supplement to Appendix A submitted by Peter N. Miller February 27, 1969.

At 12.45 p.m. the Committee adjourned until Thursday next, March 13, at 11.00 a.m.

ATTEST:

John A. Hinds,  
Assistant Chief,  
Committees Branch.

### ERRATA

Proceedings No. 6, February 27, 1969:

Page 64, line 1: Delete "protective" and substitute "Protection and".

Page 64 line 2: Delete "indemnity" and substitute "Indemnity".

Page 64, line 13: Delete "limited" and substitute "unlimited".

Page 65, line 26: Delete "dead-weight" and substitute "tanker".



## THE SENATE

### THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Thursday, March 6, 1969.

The Senate Committee on Transport and Communications, to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

**Senator Gunnar S. Thorvaldson** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, at the time we adjourned last Thursday it was understood that we would hear first from Mr. R. R. Macgillivray of the Department of Transport. However, since that time I have received a communication from two persons, Mr. John P. Nelligan, who represents a client who is interested in section 1 of the bill, namely, the section relating to what is known as hovercraft.

I also received a communication from Mr. A. B. German, President of Hovercraft Canada Limited, whose home is in Ottawa, and who would like to be heard before the committee.

Consequently, I suggested to them that if they were here this morning perhaps it would be agreeable to the committee to hear them first and then proceed with the rest of the matters involved which would commence with the appearance of Mr. Macgillivray. Is that agreeable to the committee?

**Hon. Senators:** Agreed.

**The Chairman:** Mr. John P. Nelligan.

**Mr. John P. Nelligan, Counsel, Pacific Hovercraft Ltd.:** Mr. Chairman, and gentlemen, I am grateful to you for permitting us to appear on such short notice, but we were concerned with so many of the technical aspects of what constitutes a new industry in the form of transportation in Canada. That comes under the head of what we now know

as hovercraft. I feel this committee will be interested to learn some of the technical difficulties which we feel will arise if the bill is passed in its present form.

I will ask you to be good enough to hear the President of Pacific Hovercraft, who is at the present time, so far as we are aware, the head of a company which operates the only commercial hovercraft service in the country. Mr. Jones has had considerable experience in this field. He is now using the vehicles which were probably familiar to you at Expo, as ferry service in British Columbia.

He is here today and I hope he can explain to you some of the problems I anticipate will arise if this legislation is passed. May I ask Mr. P. Barry Jones?

**Mr. P. Barry Jones, President, Pacific Hovercraft Ltd.:** Thank you.

**The Chairman:** We have before us, gentlemen, Mr. P. Barry Jones. What is your position with Hovercraft?

**Mr. Jones:** I am the President of the Pacific Hovercraft Ltd. in Vancouver, sir.

**The Chairman:** Proceed, Mr. Jones.

**Mr. Jones:** We have taken the liberty of putting together a very small brief which is very basic in content. (*See Appendix "E"*)

**The Chairman:** Have you copies of that brief?

**Mr. Jones:** We did not have enough for everyone, Mr. Chairman, but we did bring 10 or 11. I have one extra copy here.

Our company has been operating commercial service for about two weeks now. We have had a hovercraft in Canada since November, primarily on trials until the initial service started. We will be getting three more SRN-6 hovercraft on or about the end of April this year. Our interest is primarily because we feel that hovercraft, although

there will only be four commercial machines this spring—there is a coast guard machine in Vancouver and that makes five. I am sure in two years you will see innumerable hovercraft of all shapes, sizes and models—it would appear to us that implementation of the Canada Shipping Act as a governing authority of hovercraft will sadly restrict the development of air cushion vehicles.

We have set out in our brief some of the problems. I would not like to say the Marine Department of Transport people are helpful in trying to assist us in getting our operation going. I am sure the Marine Department and ourselves will be discussing it forever if the Canada Shipping Act is the regulating authority. The problems are basically the unique capabilities of hovercraft. It is not an airplane and is not as much a ship as an airplane. It is like comparing horses, cows and sheep; they are all very different. Our hovercraft program will be throughout Canada. It probably will go into the United States in the near future if proper licensing can be approached. It definitely will be operating in the Arctic area this summer. Approximately 80 per cent of its operation will not be in a marine environment. The regulating hovercraft under marine authority when the hovercraft is operated on land is bound to create some difficulty. These difficulties are a means. We have minor problems, big problems, and we have worked them out to date in co-operation with the Department of Transport, but we can sit and list 400 problems. We have not even gotten hold of the Department of Transport yet and they are sitting here and probably anticipating calls from us. They have been getting them. It is our opinion that the only effective way to allow proper development of the air cushion vehicle industry is to give it rules and regulations of its own.

The Canada Shipping Act is a very thick document. If you took away some of the pertinent facts which do not reflect on hovercraft, you probably are taking away 95 per cent of the Canada Shipping Act.

It seems much easier to include air cushion vehicles in their own regulations in this statute because it is not a difficult matter. They are a very experienced group of people, and that group is here in this room, and I am sure that amongst those people quite rapidly and well equipped regulations could be produced, under the Department of Transport, without

putting it in the Canada Shipping Act, not by marine rules.

In our brief we have briefly reviewed this problem. It is a major problem and could in fact result in commercial hovercraft operations becoming impractical. We feel that licensing should be a federal matter. Hovercraft will be operating on chartered services and scheduled services, etc, and will be operating throughout the country, not within one province, and they will be operating internationally, too, we expect. Therefore, we feel that for licensing the federal Government should be the authority.

One other area of interest is that at the present time competing vessels with hovercraft are operating in marine environments and are tax free, they qualify for posting licences. When hovercraft are used in competition with these, although they operate at a very different performance, and have different circumstances, we feel that they should be tax free and that retroactivity of any act that is passed should be effective for hovercraft.

Under present conditions, it appears that, if the bill is passed as it stands air cushion vehicles will be tax exempt. Although we do not agree with the bill as it stands, we suggest that, if it is passed, it should be retroactive.

When we brought our first hovercraft into Canada, there were no rules or regulations on it, so it was subsequently imported as a road vehicle for customs purposes and as an aircraft for tax purposes.

**Senator Isnor:** Would you require a licence in bringing it into Canada?

**Mr. Jones:** Our company competed for licences under the Canadian Transport Commission and it took three and a half years. There was a public hearing in Victoria in 1967 and the decision was set out in May of last year. It was appealed and the appeal was resolved shortly thereafter.

Pacific Hovercraft is Class 2 under the Air Transport Committee licence, operating between Vancouver and Victoria, and between Vancouver and Nanaimo; and there is a Class 2 Air Transport Committee licence being processed for the Arctic area of British Columbia.

**Senator Isnor:** Your air licence, is it restricted to the west coast?



**Mr. Jones:** The department had specific routes, although for chartered aircraft, these are being processed now.

**The Chairman:** Mr. Jones, before you go further, it seems to me that your representation concerns present federal legislation concerning hovercraft. As I see it, this bill deals with hovercraft in a very minor way, in that clause 1 of the bill has the effect of amending section 2 of the Canada Shipping Act and amends it certainly not in any fashion that seems to be of any great import. I will read the amendment; it is a definition; Air cushion vehicle is defined in clause 1 of the bill:

"(2a) "air cushion vehicle" means a machine designed to derive support in the atmosphere primarily from reactions against the earth's surface of air expelled from the machine;"

**Mr. Fortier,** am I correct in saying that is the only legislation in this bill concerning hovercraft? I understand from Mr. Fortier that there is another clause in this bill which provides for the sections of the Canada Shipping Act which will be applicable to hovercraft once the bill is proclaimed. That is clause 27, which Mr. Fortier says also deals with hovercraft.

Do we understand, then, Mr. Jones, that we are dealing only with the present legislation?

**Mr. Jones:** Our understanding of the legislation is that it gives powers working under the terms of the Canada Shipping Act authority to regulate and exclude portions of the Canada Shipping Act that do not apply to hovercraft and to add other portions or at their discretion operate in circumstances which may benefit them. We feel that this is going at it the wrong way. It would be far better to wait a short period of time to enable the numerous well-qualified people who are capable of giving sound advice concerning air cushion vehicles the opportunity of doing just that. These qualified people, especially from Canada as well as other places, could help develop rules or regulations which would apply to air cushion vehicles, which would be preferable to using something presently in effect but which is inappropriate.

**The Chairman:** Honourable senators, these representations in regard to hovercraft may take more time than I had thought when I suggested that Mr. Nelligan and Mr. German appear today. I believe it is important to have

an opportunity today to hear Mr. Miller, the gentleman from the United Kingdom, whom we heard last Thursday and who has just been to Washington and has returned here for this hearing.

Might we have an idea from you, Mr. Jones, how long you think your representation will take? Mind you, we propose to give you all the time in the world to present your case before this committee. It is just a matter of timing that I am talking about now, because my understanding had been, as I mentioned, that this was a minor amendment and that we would not be very long on it. Otherwise I would not have put you into this part of the proceedings.

**Mr. Jones:** We just wanted to attempt to bring to the attention of the committee the importance of air cushion vehicles, even though at the present time they cannot be called a big group, since they comprise only one commercial operator and one Government craft. But it is important at the beginning to get good legislation and good rules in the legislation governing the operation of hovercraft. That is important right from the beginning.

Our submission, basically, would be to not resolve anything at this time until full submissions on the operating capabilities have been put before you. For example, you have craft now operating quite soundly, if not on difficult routes. The coastguard operates craft in Canada and the Department of Transport have people who have studied the hovercraft and, probably in very short order, by some sort of working group very sound information could be provided. But it would be impossible to provide such information at this time. I think. It would be difficult to give a full submission on the problems at the present time because we have only been operating now for five months and two weeks, commercially. Even so, we do know some of the problems now.

**The Chairman:** My point now is not whether it is possible or impossible for you to give a submission. I am trying to find out what time you will require, because Mr. Miller is here from the United Kingdom and we promised him that we would be sure to hear him today, and it is just a matter of timing, Mr. Jones. Can you just give me an idea how long your submission will be and I will get the same information from Mr. German and then we

will proceed with the other part of the bill which we were discussing last Thursday.

**Mr. Jones:** I would suggest that if this submission is accepted by the committee and with our solicitor's approval we do not need any more time at this stage.

**The Chairman:** Supposing we agree now that the brief presented by Mr. Nelligan should become part of the record?

**Mr. Nelligan:** I think that is all we require for now. We also have some literature which has been distributed on the technical aspect of hovercraft. I am referring to the green covered document. At this stage there is nothing much further we can say to the committee. However, on the amendments, as we have pointed out, clause 1 deals with the definition of hovercraft, but in our view the critical clause is clause 27 which brings hovercraft into all the subsequent regulations concerning ships under the Canada Shipping Act. That concerns us greatly. Of course we are also to some extent concerned with clause 28 which provides that clauses 1 and 27 shall not come into effect until a date to be announced. Apparently the draftsmen did contemplate that this aspect of the legislation might be deferred. Now, this might be one way of dealing with it because what we are saying is that the time is not yet right for making a hovercraft into a ship. This should be well considered before this house does anything about it. I am simply pointing out, Mr. Chairman, that these three clauses would have to be considered when dealing with the question of hovercraft. Other than that it is not necessary to take up the time of the committee at this stage.

**The Chairman:** Thank you. I want you to understand that there is no effort at all being made to gag you. I assure you that you will be given ample time to make what representations you feel you want to make.

**Mr. Nelligan:** For example, taking this requirement that the name of the ship would be on the masthead, this would be rather cumbersome. We feel it would be rather difficult for the operators to operate under the regulations as they are now set out and we recommend that there should be no further recommendations made until the department is prepared to consider regulations for the hovercraft as a unique vessel. We are in a unique group just as aircraft are in a unique

group and we feel that we should not be thrust into this pot now. Hasty action at this time might well destroy a very important aspect of transportation in Canada particularly one that is of great importance to the development of our remote areas.

**The Chairman:** Now, Mr. Jones, if you would like to complete your statement go ahead.

**Mr. Jones:** Mr. Chairman, if it would be of value to the committee we have a few copies of detailed information about hovercraft and their special use in Canada. If they would be of value to the committee, we would be happy to leave it with you.

**The Chairman:** We would appreciate it.

**Mr. Jones:** It is just some background material on hovercraft primarily and some on our own company.

**Senator Isnor:** Mr. Chairman, I would like to ask Mr. Jones where these hovercraft are operating at the present time.

**Mr. Jones:** Primarily in English countries, Scandinavia, Brunei, and some areas in Alaska. The only long-term operations have been in England where they have been operating since 1963.

**Senator Isnor:** Are they under licence?

**Mr. Jones:** I think the chairman has indicated there is a gentleman here from England and he could probably answer that for you.

**The Chairman:** Mr. German, you have heard what we have been discussing concerning this matter. Could you be fairly brief in your presentation now, on the understanding that if you would like to make a more complete statement later on this committee would be glad to give you time for that? All this is based on our position, namely, that we have Mr. Miller here from the United Kingdom who has to get back, and most of these other gentlemen are from Montreal. We promise we will try to finish before 1 o'clock. You are located in Ottawa, I understand.

**Mr. Andrew Barry German, president, Hoverwork Canada Limited:** Yes.

**The Chairman:** And we will give you another opportunity later on to present a more complete brief than you would have time for now.



**Mr. German:** Thank you, Mr. Chairman.

**The Chairman:** Would you give your name and position, please?

**Mr. German:** I am Andrew Barry German, President of Hoverwork Canada Limited of 90 Sparks Street, Ottawa 4.

Mr. Chairman, it would take no more than 15 minutes, including perhaps any questions any members of the committee would like to ask. I have some copies coming in of a very short brief I have prepared which will be available for circulation in a matter of 10 or 15 minutes.

**The Chairman:** I think that will fit into our schedule this morning, if we can dispose of it within that period of time.

**Mr. German:** Mr. Chairman, honourable senators, my company was incorporated under federal charter in October, 1966, for the purpose of operating, managing the operations of and advising and consulting in the uses of air cushion vehicles in Canada. Our first operation was at Expo '67, where we carried 370,000 passengers for a total of 2,700 vehicle operating hours using two leased SRN6 hovercraft. This was a purely commercial venture. I think it might be well for you gentlemen to understand the various types of tasks which have been undertaken, in addition to the type of task Mr. Jones' company is now undertaking.

We then conducted a training course for the Department of Transport in late 1967, and took an SRN6 hovercraft to Fort Churchill, Manitoba on a test program for the Department of Transport, and we operated out of Fort Churchill in the months of January, February and March, 1968, as a test in low temperature conditions, under contract to the Department of Transport.

In July, 1968 my company managed a test series for the Department of Transport of the wheel-driven BC7 Terraplane air cushion vehicle, a completely different device with an air cushion and propelled by wheels designed to operate over very soft ground, such as winter roads in the summertime.

In addition, my company provides a full-time senior officer for the Canadian Coast Guard's air cushion vehicle search and rescue unit located in Vancouver, and we have been providing consulting services for over a year in that role.

Further, my company has been engaged during the last year as the lead member of a consortium in a major research study for the National Research Council, the Department of Transport, the Department of Industry, the Canadian Transportation Commission, the Department of Indian Affairs and Northern Development, the Department of Energy, Mines and Resources and the Atlantic Development Board, on the subject of the applications of and market for air cushion vehicles in Canada. This study was turned over to the government bodies involved in December.

We have, therefore, a rather firm base from which to speak from the point of view of variety of experience in the technical, operational and economic aspects of air cushion vehicles.

As far as the existing classification of air cushion vehicles is concerned—that is, problem as an aircraft—I was very pleased to learn that Bill S-14, amending the Aeronautics Act, contained a provision to amend the definition of an aircraft in such a way that the ground effect machines, air cushion vehicles—call them what you will—will be excluded from the category of "aircraft". In fact, this is similar to the action taken by the International Civil Aviation Organization. They carefully reworded their definition so that hovercraft or air cushion vehicles would not come anywhere near them.

**The Chairman:** I think the committee would like to know whether your vehicles are manufactured in Canada; or, if not, where they are manufactured.

**Mr. German:** The air cushion vehicles that have been produced to date, with the exception of some prototype ventures, have been manufactured in Britain, France or the United States, and none, so far, in Canada.

The ACV really never was an aircraft, but the need for extra light construction, high power and low weight engines, and aerodynamic propulsion and control methods, initially landed ACV development in the lap of the aircraft manufacturers. Undoubtedly ACV's will draw heavily on the technology of the aircraft industry, but light alloy construction and the use of gas turbine engines, for example, are becoming a quite familiar part of the marine environment, and the new technology is being developed in response to the need.

The existing classification of ACV's as aircraft is, to my mind, completely illogical. Indeed, I find it very hard, if not impossible, to define what ACV's are. There are many different kind of ACV's. There are purely marine craft which draw water like a conventional vessel, but which use an air cushion to lubricate their passage through the water and thus increase their speed. There are the marine optimized surface skimming craft, which you gentlemen can see before you in the brochure that you have. These devices are designed to travel more quickly over the water than anything else of their size and power. They have the property of being able to emerge from the water and thus become amphibious. There are devices that are propelled by wheels which can travel over rudimentary roads and which use the air cushion as a method of spreading the load and increasing their mobility. One can also have a simple lifting platform which requires something else to pull it along. Thus, while I would not venture to say what ACV's are—and I think it would be unwise to go into that—I certainly wholly support the stand that they are not aircraft.

ACV's are becoming more than just technical curiosities, and it is, of course, necessary to have some ground rules to guide users, operators, developers, inventors, and, of course, the Government officials whose duty it is to guard the public interest. If logical, sound, sensible rules to cope with a particular new situation do not in fact exist, then the public servant must cast around for the nearest approximation.

The result of such a situation is quite graphically illustrated by my own company's experience in the spring of 1967, and Mr. Jones, I think, had similar experience—or, perhaps, different ones but in the same class.

First of all, I imported two devices as motor vehicles. They were placed on the registry of civil aircraft. I complied with the procedures and requirements of the Air Transport Board, and obtained a licence to operate a commercial air service. The Department of Transport, Civil Aviation Branch, examined the qualifications of our operating and maintenance personnel, and they inspected the craft, as did the Steamship Inspection Board. At this time a practical demonstration established that we did not require seat belts for takeoff and landing. The operators were given an examination and issued certificates

as air, land-mobile, and marine radio operators. Our three landing areas were inspected and certified as licensed airports, although aircraft were restrained from landing on them, I am glad to say. Finally, a permit to fly was issued, which contained the endorsement that we were required to carry two cork lifebuoys each with 14 fathoms of line on the outside of each of our craft. This was finally removed because it was...

**Senator Langlois:** What about anchors?

**Mr. German:** We did carry anchors at one time, sir, because we were required to do so by the regulations.

In the meantime the harbour master was properly concerned about safety, and we were required to demonstrate various appropriate safety procedures to assure him that we would not constitute a menace to navigation. He then issued, on behalf of the National Harbours Board, a permit to operate a ferry service within the limits of the Port of Montreal. The Wildlife Service then warned against operation without due regard to the safety of wild fowl in the areas in which we were required to operate.

At last we began to carry fare-paying passengers. It is only fair to point out that the officials concerned were most helpful and co-operative and made every effort to expedite their administrative procedures. They were quite prepared to listen to the logical argument and accept our operation as to what it was—a self-disciplined and professional one. The regular rules they had were simply not reasonably applicable and they did the best they could. I must say that subsequent experience with the government of the Province of Quebec was not quite so happy, because while aircraft and vessels using diesel fuel were exempt from paying the tax on diesel fuels, the hovercraft was attacked from a somewhat peculiar viewpoint.

We did use diesel fuel in our gas turbine engines, but the inspector, who had never seen a gas turbine engine before, taxed it at the full rate of tax on the basis that we had a gas turbine engine rather than a diesel engine, although the fuel itself was exempt if it had been used in another form of vessel. The problems of pioneering are somewhat complex and sometimes crippling.

The Department of Transport in fact expressed its views and intentions in early 1968 regarding the proposal of the legislation



now before the standing committee. It is my company's opinion that these amendments are a practical and sensible step. When an ACV is used in navigation—in other words, when it is operating over or in the water—it must have the status of a vessel; from the economic point of view it must compete with vessels, and from the overall operational point of view it must conduct itself as a vessel. This principle would not hold true when the same ACV operates over land; it would have the status I would think, of a special purpose motor vehicle, of which there are many examples in Canada, many of which are not permitted to run on the highways.

It would seem to me that the purpose of this amendment to the Canada Shipping Act is not to say that air cushion vehicles are ships, because plainly from the variety of vehicles I have recounted they cannot across the board be ships, but it is to put the air cushion vehicle when it is used in navigation, which is operating over water, in the same category as ships. I believe this is a very different thing. I believe also that these vehicles when operating in this environment must come under some existing act, with due regard for proper changes in the regulations which are written under that act, or indeed the writing of completely new regulations, because I agree with Mr. Jones here that new regulations are required.

If the advent of the ACV as a significant potential contribution to our Canadian transportation scene was not being taken as a serious matter, this particular section would hardly be before the standing committee. For this new and, I think, somewhat tender plant to survive economically and to grow and contribute it must have special consideration technically. By this I do not mean that matters of safety and crew standards, for example, should be treated indulgently, but rather that they be examined objectively, knowledgeably and with a full understanding of the implications of decisions made. In the current delicate economics of smaller passenger-carrying ACVs an arbitrary requirement to, for example, carry a licensed engineer at all times where this might not be necessary could be a crippling burden for an operator. It is my firm belief that the responsible officials are well aware of the care and judgment they must exercise in forming the regulations which the Governor in Council will be empowered to enact under section 712A of the proposed amendment to the act.

We are very concerned, however, that with this new responsibility they may not be given the means to discharge it. Each problem as it arises will be a new one. These must be handled by trained and experienced professionals and not by mere functionaries, as precedents will be set which will have far-reaching results.

Regulatory decisions will be made which will affect vehicle design and thus economics. Designers, developers and operators cannot wait indefinitely for decisions. They must be able to refer their problems to competent professionals in the Public Service, who are able to devote full time to them.

The decisions of steamship inspectors and inspectors of equipment and ship's tackle are bound to have a significant short-term and long-term effect. The best of intentions are not good enough. Inspectors must be specifically qualified and experienced to be able to handle their jobs with relation to ACVs.

In conclusion, Mr. Chairman, it is the opinion of my company that the public interest will best be served at this stage first by applying the parts of the Canada Shipping Act as outlined in Bill S-23 to air cushion vehicles used in navigation.

Secondly, by retaining flexibility in keeping ACVs from being economically regulated in such a way as aircraft operations are now regulated unless and until such is proven necessary.

Third, by encouraging the growth of the ACV industry by giving the appropriate Government departments and agencies the personnel and budgets they need to be able to handle ACV matters swiftly and competently.

In this regard I recommend that Part VII of the act be reviewed, with an eye to amendment to require that the Board of Steamship Inspectors include at least one member who holds a certificate from the chairman as to his competence in the field of ACV's and that ACV inspections be carried out only by people who are so qualified.

The same reasoning should apply to inspection of radio equipment and ship's tackle, which is required in the Canada Shipping Act.

In summary, Mr. Chairman, my company considers Bill S-23 to be wise and sensible, but urges that more than lip service be paid to the ACV. The machinery of Government departments and agencies must be properly

supplemented to handle the new problems which are going to arise. The proper measure of additional professional competence and experience should not cost much to acquire, and it is the best insurance that is against the death of the ACV by red-tape strangulation.

**The Chairman:** Thank you, Mr. German. Honourable senators, with your permission I am going to suggest that we defer Mr. Fortier's presentation in regard to hovercraft until some other time. Possibly today if we have time otherwise later on. When Mr. Fortier does address himself to this problem I am assuming that Mr. German will be here and also perhaps Mr. Nelligan. I must say that I did not expect this matter would take as much time as it has, and hence I allowed these gentlemen to proceed at the beginning of the meeting.

Honourable senators, is it agreed that we now hear the other gentlemen on the pollution problem—sections 23 and 24?

**Hon. Senators:** Agreed.

**The Chairman:** Thank you. Of course, we are going to hear Mr. Macgillivray first, and then we might have representations from others who are present.

**Mr. R. R. MacGillivray, Director, Marine Regulations Branch, Department of Transport:** Thank you, Mr. Chairman and honourable senators. I am R. R. MacGillivray, Director of the Marine Regulations Branch of the Department of Transport. That is the branch which administers those sections of the act. It administers most of the Canada Shipping Act provisions, including all those sections that are being amended by this bill.

Representations were made at a meeting a week ago on a number of subjects, and I understand that you would prefer that I restrict my comments at this time to clauses 23 and 24. I will have comments on some of the other representations which were made.

In respect to clause 24, I must say that I had expected the meeting to proceed in somewhat different fashion and I had thought that I would be heard before we heard the witnesses from the industry.

In my introductory remarks on this section, I had intended to say that we proposed ourselves to forestall some of the criticism by suggesting an amendment to clause 24 on page 15 in section 495b, paragraph (d) thereof. In regard to this provision, we had the

criticism, first, that all charterers are made liable for the cost of removal of wreck and cleanup of oil spills, and also that the master of the vessel is made liable.

We recognized, after representations were made to us following the first reading of the bill, that we ought to have made it clear that the charterer we are intending to deal with is a demised charterer, that is, a charterer having responsibility for the navigation of the vessel, the charterer who takes over the vessel and has the master and crew engaged and responsible to him.

Also, we recognized that it was ridiculous to make the master liable in respect of claims which could be of such great magnitude.

In making the master liable, I may say that we were simply following the words of the Navigable Waters Protection Act, which deals with the right of the minister to remove a wreck that is an obstruction to navigation and, having removed it, to recover. In that act it is provided the recovery may be made from the managing owner, the master or the person in charge of the vessel, at the time of the wreck or sinking.

We were following that precedent when we included the master among those to be liable. As I say, we are prepared at the appropriate time, when we deal with this clause, to suggest an amendment to insert a new paragraph (d) as section 495b, which will delete reference to the master and which will clarify the point that it is only intended that the charterer having responsibility for the navigation of the vessel shall be liable to the Crown for the cost of removal of the wreck and clean-up of the oil spill.

Mr. Brisset in speaking to you did, I think, refer to the fact that he understood that we had such an amendment ready.

Now, Mr. Chairman, there are two principal objections which have been raised in connection with clause 24. The first is that in the proposed section 495b there is provision for absolute liability on the owner to pay the cost of wreck removal and of clean-up and of other preventive measures. The argument against this has been made by all those who have spoken on this clause. I should indicate that in introducing this feature we were not breaking new ground. Already in the Navigable Waters Protection Act there is the same provision. If a ship is wrecked and is causing an obstruction or a potential obstruction to navigation, potentially in the opinion of the



minister, the minister is then entitled to remove that wreck at the expense of the owner, after subtracting any amount of money he may get from the sale of the wrecked vessel.

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** Do you recall the section number?

**Mr. MacGillivray:** The sections of the Navigable Waters Protection Act are section 14, which authorizes the minister to remove the wreck if it remains there for more than 24 hours, and section 16, which is the equivalent of our section 495b here and which authorizes the recovery of the costs.

**The Law Clerk:** But that is not in connection with pollution.

**Mr. MacGillivray:** No. This relates to a wreck that is an obstruction to navigation or is likely in the opinion of the minister to become an obstruction to navigation. It happens now and again that we must avail ourselves of the provisions of that section and, sometimes at considerable expense, remove a wreck that is an obstruction to navigation.

We are unable to use that provision to deal with a wreck which is not an obstruction to navigation but which is causing oil pollution or other pollution, or that is a potential source of pollution. That is the reason, of course, for this provision. In the international discussions which have been referred to on the subject of how to deal with massive pollution incidents, which discussions were prompted by the *Torrey Canyon* incident, it is quite true it has been considered that limitation of liability should be concomitant if we are to have absolute liability, and this has been true of other international discussions as well. For instance, back in 1961 and 1962 there was a diplomatic conference on the subject of the liability of operators of nuclear ships, and that, I think, is the first instance where in international discussions on international arrangements on such matters it was accepted that there should be absolute liability on the owner of the ship, this being because that is the place where it is easiest to insure and to enforce the requirements for insurance.

On the subject of the limitation of liability, I think we have heard again from all parties the plea that there should be provision for limitations. Well, again in the Navigable Waters Protection Act there is no provision

for limitation on ship owner's liability. This is not unique to Canada; I know there is a feature of the law of the United Kingdom that wreck removal is not one of the matters in respect of which the owner of the ship may limit his liability. We have not inserted this provision following the precedent of what the law already is in respect to wreck removal.

The argument has been put forward that there should be limitation of liability because unlimited liability is uninsurable as such. Mr. Brisset argued this in his presentation as did Mr. Miller, but this is assuming that there is a right to limit to this figure. Limitation of liability is a concept that I am not sure that all honourable senators present are familiar with. It is a concept that is unique in the law relating to ships and ship owners. The provision in the Shipping Act which allows a ship owner to limit his liability is this; that having been found liable for damage done in the operation of his ship and in the carriage of his goods and passengers, and having been found liable...

**The Chairman:** That is on the basis of negligence?

**Mr. MacGillivray:** Yes, on the basis of negligence, and having been found liable on the basis of negligence, he may then apply to the Court to limit his liability. That is to say, if he has done a million dollars worth of damage and his ship is, for instance, under 300 tons, he may then apply to the Court for an order limiting his liability, and the Court will grant it and his liability is something around \$66,000 or \$65,000, and all persons injured must accept this in payment of their claims for damage.

**Senator Langlois:** If there is no negligence on his part?

**Mr. MacGillivray:** This relates only to his liability for the negligence of his servants or agents.

**The Chairman:** When you refer to the fact his liability may be limited by the court, is that synonymous with the word "reduced"?

**Mr. MacGillivray:** The amount that he has to pay out is reduced. It is a limitation on the amount of his liability.

**Senator Kinley:** What is the difference between an incorporated vessel and a vessel owned by shareholders, in sixty-fourths?

**Mr. MacGillivray:** It is the liability of the owner or owners. If you have 64 owners of the 64 shares, then the total liability of the 64 of them is the limit for that ship.

**Senator Kinley:** And the individual owner is responsible?

**Mr. MacGillivray:** The individual owner is only responsible if—I am not quite sure of the intent of your question, senator.

**Senator Kinley:** If you have an incorporated company, that is another person, is it not?

**Mr. MacGillivray:** Yes.

**Senator Kinley:** If you have a ship that is divided into sixty-fourths, and everybody buys a share who has practically nothing to do with the management, there must be a difference between those two vessels. One is another person, and the other is owned by 64 people.

**Mr. MacGillivray:** I am not sure whether you are talking here, senator, about the difficulty of proving the negligence of the person involved.

**Senator Kinley:** I was thinking of the old gold franc discussion and how that applied. The individual responsibility of an owner is important; it has an effect on how it is dealt with.

**Mr. MacGillivray:** Whether your ship is owned by a corporation or by the individual owning of 64 shares, or by a number of individuals, up to 64, owning individual shares or groups of shares, the liability of the owner must be based on fault, on the fault of his servants.

**Senator Kinley:** Of course.

**Mr. MacGillivray:** And the master and crew are the servants of the owners, whether there is a number of owners or a single corporation or a single individual.

**Senator Kinley:** Yes, I know, but suppose I have a sixty-fourth of a vessel and I am interested in fishing or something, and a lot of the people in the district own a sixty-fourth, and there is a manager-owner and he is practically speaking the man who runs the ship and is the agent, if that vessel gets into trouble it is very important for the man who is a shareholder to know what his responsibility is.

**Mr. MacGillivray:** I think we are a little off the subject of limitation at the moment, when we get into this, but his liability is for one sixty-fourth of the amount.

**Senator Kinley:** But in the case of a limited company, we are within limitations there. We have a limited company. All they have is the vessel. They cannot go back on the people who have shares in a limited company?

**Mr. MacGillivray:** No, that is true.

**Senator Kinley:** You were speaking of pollution, and you mentioned the captain. You know, we had a discussion on that. We added 50 miles, and I think you have got it up to 100 miles, and England has it up to 1,000 miles. If the captain is not responsible for polluting the sea, he is not in charge of the routine of his ship. It should be the responsibility of the captain when he throws ashes or oil, and other things into the sea. That is his job.

**Mr. MacGillivray:** This is a matter dealing, of course, with clause 23...

**Senator Kinley:** I am coming back to that other clause.

**Mr. MacGillivray:** ...under which regulations are made which have nothing to do with liability for damage done, but rather impose a penalty on the owner and the master of a ship.

**Senator Kinley:** And the captain is responsible under that?

**MacGillivray:** Yes.

**Senator Kinley:** Are you taking it away from him under this now?

**Mr. MacGillivray:** No, under this we are only taking away the automatic liability that would have been imposed on him by the wording that is here, and without his being personally at fault. If he is personally at fault then the liability is there.

**Senator Kinley:** If he is at fault what are you going to do about it. The insurance men say that to pay insurance when there is no fault is contrary to insurance practice.

**Mr. MacGillivray:** No.

**Senator Kinley:** And I think they are right.

**Mr. MacGillivray:** Yes. Now, on this matter of limitation of liability, honourable senators, the important point is, I think, that this is a concept which is quite an ancient concept. It



is somewhat over 200 years old in British law, and it applied to Canada from the time of its inception in British law. In the beginning the limitation was a matter entirely within the shipping fraternity itself. In the beginning an owner was only able to limit his liability in respect of the cargo aboard his ship. By the developments over the 200-odd years since this was first introduced, he became enabled to limit his liability towards passengers carried in his ship as well as the goods on board it, and later to limit his liability against the owner of another ship which he might damage, and the owners of the cargo and the passengers aboard other ships.

This is the history of the limitation of liability limitations up until 1957. At that time the voyage was treated as a venture in which the cargo owner, the passenger, the ship owner, and the master were engaged, and there was some logic to this provision for the limitation of liability. In 1957, at an international conference in Brussels, the scope of limitation was broadened a great deal. Where a ship owner originally could only limit in the manner I have indicated, he is now in a position—and this is a provision that was introduced into our law by an amendment of the Canada Shipping Act, to which Senator Kinley has referred, in 1961—to limit not only against the owner of the cargo aboard his ship and not only against the other ship owner, but also against any person who is damaged by his ship.

**The Law Clerk:** Have you the section number?

**Mr. MacGillivray:** Section 657 and following of the Canada Shipping Act. As I have mentioned, in those provisions in the Canada Shipping Act relating to liability, the owner may not limit in respect of his liability for the cost of raising wreck. This is a provision which we did not insert. By the way, I think Mr. Brisset mentioned that Canada has adhered to this convention. It is not quite true. We have not formally adhered to this convention although we have given effect to its provisions by the amendment of 1961 to the Canada Shipping Act.

It is against that background that we must look at the situation here. Considerable emphasis was made by Captain Hurcomb and by others as to the magnitude of the claims that may arise against the shipowner. For example, the recent spectacular oil spill off Santa Barbara in California was estimated by

the United States coastguard as being 500 barrels of oil a day. As this went on for 11 or 12 days that would come to approximately 6,000 barrels of oil released by that one occurrence. Out of that there have arisen claims that are probably inflated but which total over a billion dollars for damage to shoreside property. On the other hand, the *Torrey Canyon* incident which started this international discussion that has been referred to with a view to getting international agreement on liability and the limitation thereof, involved more oil but less damage. The *Torrey Canyon* was probably carrying 500,000 barrels of oil, of which 40 per cent escaped. In other words, approximately 200,000 barrels of oil escaped from the *Torrey Canyon*, and the cost of the clean-up and the damages arising out of that amounted to somewhat less than \$10 million. So, by 200,000 barrels, \$10 million damage was done as compared to over \$2 billion damage being done by 600,000 from the oil well off Santa Barbara. The damage off Santa Barbara was tremendously greater, therefore, and we cannot say what the damage is going to be from these occurrences in the future.

We have, trading into the Great Lakes, the *B.A. Peerless* which carries about 128,000 barrels. Captain Hurcomb has pointed out what would be the position of the owners of that ship, the Gulf Oil Corporation, if it were to be damaged and were to release oil into our inland waters. But in introducing this legislation we are thinking of the people who are going to be damaged by that. Recalling that we had until last year trading into Halifax a ship of the same size as the *Torrey Canyon*, or virtually the same size, carrying very nearly as much oil, and in 1970 we will have trading into the Port of Canso ships of 312,000 tons dead weight, which are the ones that have enough space on deck for three football games, you must realize that these tankers are going to be carrying oil into our waters and exposing to danger fishermen who may lose their gear, boat-owners, resort owners, who may have their resorts rendered useless for considerable periods of time. If limitation of liability is allowed, it is these people who will suffer.

It has been suggested that we are premature in bringing forth this legislation. There is a history here: About four years ago there was an oil barge which sank in Howe Sound near Vancouver. This barge sank in slightly over 600 feet of water. The owner, recogniz-

ing that it would be virtually not economic to raise the barge, informed us after inquiry that he was not going to raise the barge. The Government kept getting complaints from people because oil was seeping to the surface and because there was a fear that there would be a massive release. The barge in question, although I cannot recall its exact size, carried less than 5,000 tons of oil in it. The depth of the water being over 600 feet made a difficult job of salvage, but in any event the Government, although not bound to, stepped in and raised the barge and disposed of it at a cost of half a million dollars.

It was as a result of that incident that the Government decided to introduce into this Canada Shipping Act the amendments that we have here. It was not as a result of the *Torrey Canyon* incident.

**Senator Langlois:** May I interrupt at this point to suggest to the witness that since he has referred to the total damage done by the *Torrey Canyon* he might inform the committee what would be the limitation of the owner's liability, that is, the owners of the *Torrey Canyon*, if the limitation that is applicable under the present rules had applied to them.

**Mr. MacGillivray:** I do not have an accurate figure on it, Senator Langlois, but a rough estimate would be \$2,700,000, under the law as it exists.

**Senator Flynn:** Mr. Chairman, may I interrupt? The witness mentioned that the reason for not permitting the liability here would be because of the extensive damage that could be caused to shore property. May I suggest to him that as the amendment is drafted, unless the clean-up job is made by the Government, a third party has no claim against the owner unless he proves fault first. Secondly, I would say that, if his argument is valid for not limiting the liability because damage is caused to third parties, then this would be valid in all other cases where the limitation of liability presently applies.

**Mr. MacGillivray:** I think it is true, senator, that if there were an incident such as the *Torrey Canyon* incident now, but off the coast of Canada, and a person on shore were damaged by that, whether through damage of his beach or otherwise, he would have to prove negligence before he could recover, and, having done so, he would find that, if there were sufficient claims, the claims were

such as in the vicinity of \$10 million against the ship whose limitation figure is \$2,700,000, definitely he would receive 27 per cent only of the amount of damage he could prove.

**Senator Flynn:** Whereas if the clean-up were made by the Government the full amount could be recovered, without even considering the question of fault?

**Mr. MacGillivray:** Yes. Under this provision, if the Government felt it was serious enough that it ought to step in and do the cleaning up, then it certainly would be entitled to recover from the owner, and without limit.

**The Chairman:** Senator Flynn, would you care to follow up with the witness on the question of what was actually the legal liability in regard to that ship which sank in Howe Sound in 600 feet of water? I think that might be interesting for the Committee.

**Senator Flynn:** I think you have put the question.

**The Chairman:** I have really put the question to you, but the chairman wants to be silent as much as he can. Anyway, I think that would be illuminating to the committee.

**Mr. MacGillivray:** We are not really able to say whether it would have been possible to prove a claim, whether a person who was damaged would have been able to prove a claim. The sinking was unexplained. The barge was at the end of a tow line. The people on the tugboat heard a crack, and the barge started to sink. Whether that was some inherent fault in the barge, it was going to be very difficult to prove. I never did pursue the question as to what was the cause of the sinking, or if I did, I do not recall it at this time, but having gone in as a volunteer to raise the wreck and dispose of the oil, I think we would have had no claim against the owner, even if he were negligent, though the people ashore might have been able to prove negligence and to have had claims for damaged beaches and so on.

**The Chairman:** Then we take it the Government did not assert a claim in that case?

**Mr. MacGillivray:** No, we did not. As a matter of fact, we did not even have the right to go and interfere with this ship; she was still the property of the owner. We did not even have the legal right to go and tamper

with it, and we had to deal with the owner and obtain his permission to tamper and deal with his property.

**The Chairman:** Was the oil salvaged in that case; and, if it was, whose property was it?

**Mr. MacGillivray:** It was salvaged, and in return for the owner giving us permission to deal with the wreck we entered into an agreement with the owner before we raised the wreck and it was a term of the agreement, firstly, that we had the right to go ahead and do this; and, secondly, that anything we recovered, the barge itself and its cargo, became our property, and this amount was set off against the cost of recovery.

**Senator Hollett:** Before they sail, can vessel owners get insurance against such an emergency arising, or would it be too costly?

**Mr. MacGillivray:** I think it might be preferable if that question were asked of the other expert witnesses who are here and are much more knowledgeable than I on this feature.

**Senator Flynn:** Do I draw the conclusion that the witness is doubting the value or the principle of the limitation of liability now?

**Mr. MacGillivray:** I should say this, Senator Flynn, as the Minister of Transport has announced, we are doing a thorough review of the Canada Shipping Act, hoping to come up with a complete revision of the act, to bring it into modern terms, or into terms that are consistent with modern conditions. In the course of this, in the department we are going through the act in the greatest detail, and we are looking at every provision in it and are looking at the reason behind each provision and the objective we are hoping to reach by that provision, and whether it is appropriate in today's circumstances. When we come to the provisions on the limitation of liability, we will be doing that.

**Senator Flynn:** You would have already made one step with this amendment in removing the limitation of liability.

**Mr. MacGillivray:** I should say this, that had we known that the *Torrey Canyon* incident was going to arise and that there were going to be international meetings trying to achieve a world-wide rule of law governing incidents and circumstances of this sort, it is quite possible we would have deferred action

until that time. However, we had been committed to this, and the Government had decided to go ahead with this provision.

**Senator Flynn:** What I suggest is that you could have the principle embodied in this new section 495D enacted, but still retain the principle of limitation of liability. You are doing away with this principle, and I am wondering whether this is the first step towards complete removal of any limitation of liability.

**Mr. MacGillivray:** I think it should not be indicated we are doing away with anything, senator, but actually what we are doing is imposing a liability, and the way the bill stands now we are not taking the further step of granting limitation.

**Senator Burchill:** Under what authority, previous to this section, did local harbour masters or local authorities make steamers or vessels polluting harbours with oil or other pollution material clean up the mess?

**Mr. MacGillivray:** Normally, when there has been an oil spill in a harbour, particularly if it relates to a tanker or to a spill while fueling a ship or while off-loading a cargo of oil, the oil companies have adopted a very responsible attitude, and immediately proceed to clean up operations without any prodding from the department or anyone else. Similarly, I would say that most of the ships which negligently or otherwise pump oily wastes or oil itself into our waters proceed immediately to try and contain it and to clean it up.

At present under the section that is being amended by the previous clause, clause 23, we have regulations which make it an offence to cause pollution; and there is nothing in the Shipping Act though about the clean-up of that. This merely imposes a liability through a penalty, but our experience has been that we have, over the years since we have had that provision in there, had some 90 prosecutions at the rate of something—I forget how long it has been there, but something in the vicinity of 10 prosecutions a year, but normally even in those cases the owner of the ship proceeds immediately to effect a clean-up.

**Senator Burchill:** But it was under that section of the Shipping Act that the harbourmaster, or whoever it was, took action?

**Mr. MacGillivray:** No, if the harbourmaster cleans it I suppose he is a volunteer, in the



same way as we were when we raised the oil barge in Howe Sound.

**Senator Burchill:** But the liability of the ship is not included at the present time?

**Mr. MacGillivray:** That is right.

**Senator Burchill:** There is no liability at all?

**Mr. MacGillivray:** They would have liability to the persons damaged if they were at fault—if there was negligence.

Now, Mr. Chairman, it has been suggested unanimously by the witnesses from the industry, I believe, that the Government should consider deferring this provision, or certainly this portion of it, which is the proposed new section 495D until such time as we see what is going to come out of the international discussions that are now under way. These discussions, as you know, arose following the *Torrey Canyon*. The International Maritime Consultative Agency, IMCA, immediately began discussions on both the technical problems arising out of massive oil releases and the associated legal problems, such as questions concerning the right of a coastal state to reach outside its territorial sea to the high seas, and deal with a ship which is probably in contravention of the accepted principle of freedom of the seas. That is one aspect, and the other is the aspect of the liability of the ship owner for pollution, and the limitation of that liability.

In quite recent days both the Government of the United Kingdom and the Government of Norway have taken pains to let us in the Department know that they themselves are deferring any action in this regard until they see the outcome of the international negotiations. Both of the representatives of these governments who spoke to us made it quite clear that they were not making any representation to the Canadian Government, but they did want us to know that they were deferring action on this until the results of the international discussions, which everyone hopes will become final in November of this year, are known.

We have also been informed that the Government of South Africa, which had legislation before its Parliament, did defer it after representations were made to it.

The representations which were made here last week have been brought to the attention

of the minister. I have no instructions on the subject from the minister. So, I am certainly not in a position to suggest that this matter be deferred until later.

**Senator Flynn:** Have you put the question to the minister?

**Mr. MacGillivray:** The question has been put to the minister, yes, sir.

**Senator Flynn:** So we should probably call him.

**The Chairman:** I was going to suggest, honourable senators, that Mr. MacGillivray seems to have really come to the crux of this problem during the last few minutes. I had made a note here to ask him whether he has made a statement as to just what his attitude is in regard to deferring this legislation in the same manner as he has said other countries have done.

Honourable senators, you might consider now whether we should try to have the minister before us on this point.

I just want to refer to this situation which was brought out the other day by Mr. Miller and, I think, others, namely, what is Canada's position if we legislate now vis-à-vis the United States, having regard to this huge coastline on both the Great Lakes and the St. Lawrence. What is our position if we legislate now on this matter, and the United States does not? Would the members of the committee like to address themselves to that before Mr. Miller and others proceed?

**Senator Flynn:** It seems to me that this is the first question. If the minister will say he is considering deferring the legislation, then that will solve the problem for the time being.

**The Chairman:** I am in your hands, honourable senators.

**Senator Denis:** It is no use calling the minister if a decision has not yet been taken. I suppose the department will know when a decision is taken. Mr. MacGillivray said the minister is aware of the matter, but no instructions have been given.

**Senator Flynn:** Perhaps he has no instruction to give, but he wants to tell us what his feeling is.

**Senator McElman:** May I ask the witness a question, Mr. Chairman?



**The Chairman:** Yes.

**Senator McElman:** I understand that on this point the Government has no right in law to enter into such a situation in order to clean up. Is that correct?

**Mr. MacGillivray:** Well, we obviously have a right to clean up our own property, but in order to clean up the property of private individuals we would need their consent, I presume.

**Senator McElman:** But normally the Government as such has no recourse to the owner or the charterer?

**Mr. MacGillivray:** We have no recourse against them when we step in voluntarily to make a clean-up.

**The Chairman:** You are infringing the rights of the individual?

**Mr. MacGillivray:** That is a possibility.

**Senator McElman:** May I make reference to a case that is current? I have only preliminary information on it. Within the last week or ten days an international waterway between Canada and the United States—this is nothing on the order of the Torrey Canyon incident. I am referring to the St. Croix River which lies between Maine and New Brunswick. There has been a spillage or a pollution which is stated to be oil. By the vagaries of current and wind it has ended up on the American coast rather than the Canadian coast. My information is that it has polluted quite badly what I believe is called Red Beach at Calais. I am told there was only one vessel in the area which was carrying a substance similar to that which has polluted the area, and that the owner or charterer of the vessel has disclaimed any knowledge or responsibility in the matter.

I simply mention this as an incident that is current, and which tomorrow could happen on the Great Lakes system with a vessel of the tonnage that was mentioned here a few minutes ago. The damage could be very, very great.

The reason why I raise this matter is because it seems to me there is some urgency for the Government to establish a legal situation wherein the minister can act. We have been told it would be very arbitrary. Well, there are times when the public interest demands that the minister be able to act, espe-

cially when those who are involved disclaim a responsibility.

**Senator Flynn:** In the case you just cited, if the Government was unable to prove that the substance came from the vessel mentioned, he could not use even this provision.

**Senator McElman:** I agree, senator. I do not know in this instance whether it could be proven or not, but, as I say, the information is very preliminary as yet and there is only one vessel in the area.

**Senator Flynn:** There would be a presumption, in your case, yes.

**Mr. MacGillivray:** I think in that case, senator, there was only one vessel in the vicinity. It was suggested that it had been flushing its tanks when passing by, but this was a barge towed by a tug and there was no one aboard it. So it could not have happened while it was passing by empty and unmanned. We were not sure whether it came from ashore or from a ship, and, fortunately, on looking at the beach on Monday our people found that there was a very minimal amount of pollution, as it turned out. Indeed, they took samples of the oil but they were not able to really get a large enough sample to compare it with the oil at the tank farm to see if it was the same oil.

**Senator McElman:** I felt I should raise the point so the committee could understand that there would be situations where owners, although the preponderance of circumstantial evidence would indicate they were responsible, would disclaim responsibility when they felt there could not be any burden of proof brought against them.

**Senator Hollett:** Is anybody ready with regard to these particular sections as yet? Apparently we have to hear from the minister before we will know.

**The Chairman:** I am just coming to that point, Senator Hollett, because Mr. MacGillivray suggested he might be able to make some statement coming closer to the situation in regard to that problem. Would you like to make a statement before I call the other witnesses, Mr. MacGillivray?

**Mr. MacGillivray:** I am sorry, Mr. Chairman, but it was not on that point. There were some other matters raised. Mr. Brisset raised the problem on section 495c and proposed an

amendment that would allow the owner the right to step in and take his own corrective action without the Government stepping in and preventing that. On this again we are following the pattern of the Navigable Waters Protection Act, which allows the Government to step in whether the owner wishes to or not.

Our practice under the Navigable Waters Protection Act has been, when the wreck occurs, to communicate immediately with the owner and say that the provisions of the act are there authorizing us to remove it and, unless he steps in and removes it, we will.

Mr. Hyndman has had personal involvement in a case of this sort, the *Tritonica*, which sank in the St. Lawrence river several years ago. The owners did the removal job at a considerable cost, I may say, well over \$2 million. The limitation figure was considerably less than that. This brings the point up, by the way, that these ships have been sailing into Canadian waters all these years subject to a liability which is unlimited. But this is not unique and I do not think it has raised the insurance rates or made the Canadian ports places that shipowners will want to avoid.

We feel that it would be a mistake to put any limitation on the rights of the minister to intervene. In the *Torrey Canyon* incident the British Government did delay for a considerable period while the owners sent people aboard the ship to see about salvage. It was only after several days' delay that the British Government did intervene. We feel that it is essential in the public interest that the Government have the right to intervene immediately, whether or not the owners wish them to. But quite obviously we would prefer to see the owner do it.

In the Department of Transport we have set up a committee, or at least we have organized an interdepartmental group with representatives from the Departments of Fisheries, National Defence and others, with a view to preparing a plan to be brought into operation, if and when we should have an incident similar to the *Torrey Canyon* incident. This is a new operation. We are not sure what sort of plan is going to come out of it, but we do know that we are going to need the co-operative effort of a great many departments of the Government, both federal, provincial and municipal, probably, and we also will need the co-operation of the industry.

We will have to consult with the oil industry and the tanker industry to determine the sort of problems that we are going to possibly meet, and we hope to involve them in the planning and we hope that eventually we will have at strategic points in Canada a group of people who will be familiar with a plan that is to be put into operation should there be a massive oil spill, and we would include in that group people from the industry.

Certainly the minister, in deciding whether he is going to intervene and try to take such action as the British did in the *Torrey Canyon* incident, or something of the sort, in taking that decision, is going to be advised by this local group, which, as I say, will include the representatives of the industry. Certainly, we would, I am sure, be in consultation with the representatives of the owner of the tanker and certainly the intention of the Government would be that we would prefer to see the work done by the owner of the tanker or by the oil industry, people who themselves I know have developed a considerable expertise in this question of dealing with massive oil pollution.

**The Chairman:** Thank you, Mr. MacGillivray.

With your concurrence, honourable senators, I think we should now call on Mr. Miller who was here last Thursday.

**Hon. Senators:** Agreed.

**The Chairman:** For the record, Mr. Miller, would you please give your qualifications for being here, where you are from and so on? We would appreciate that.

**Mr. Peter N. Miller, Director of Thomas Miller Insurance Limited of London:** My name is Peter N. Miller and I am a director of the firm of Thomas Miller Insurance Limited of London. I am appearing before you today as I did a week ago representing the major insurers of shipowners liability. The group I represent, as I explained to honourable senators last week, insures approximately 75 to 80 per cent of the world's shipping tonnage. It is, therefore, as an insurer I speak to you, not as a lawyer. I think the most interesting legal points brought up by Mr. MacGillivray are better answered by the very eminent legal gentlemen who are here today than by myself. If I may just comment on the insurance aspects of one or two of the things which Mr. MacGillivray has been saying, I

would be most grateful to you for that opportunity, sir.

I think, Mr. Chairman, that in fact, Mr. MacGillivray has not really commented at all upon the insurance implications which I put before you last week.

As I said, I hope plainly, it is no duty of mine, as an insurer, to say what you should legislate or even to suggest you defer it. These are legal questions to be put to you by legal gentlemen. All I must put in front of you is this, what can be insured by a shipowner on whom this very heavy extra burden of liability is placed.

If I might just give you a figure which I think will show you the size of the insurance problem, it is this. In the United States certain similar proposals to your own are being made. The one most commonly used by the Senate and House of Representatives' committees over the border is to put this new liability upon shipowners with some such limitation formula, perhaps in the region of \$100 per gross ton or \$10 million overall per vessel per accident. If one relates even that additional burden to the shipping of the world—and this is what we are talking about, gentlemen, because as soon as the United States and yourselves pass legislation like this, so will everybody else very quickly—we are talking about shipowners of the world having to buy additional insurance per annum in the region of \$20 billion. That is a very large figure, and it is going to cost shipowners of the world a very great deal of money.

**The Chairman:** Would you like to suggest the premium figure, or is that not possible? Perhaps you could give an estimate.

**Mr. Miller:** Yes, I think I might be able to give an estimate. May I quickly deal with it in three stages. First of all, if the bill were passed into law as your Government has placed it in front of you, the liability, as I said last week, is uninsurable; there is no doubt about that at all. I am an underwriter and I should love to have as much premium as possible, I may say, but as an underwriter I may tell you it is not possible to insure it on the basis it is put in front of you. If you pass it like that, you must realize, if I may say so, that the concomitant to this is that you as a government might be forced to provide the necessary insurance coverage.

**Senator Flynn:** Why?

**Mr. Miller:** Because a shipowner, if he were partially uninsured for such risks, would buy what commercial insurance he could, but he might feel he would be unable to trade to a country where he was exposed to such enormous liabilities for which he was not insured in full.

**Senator Flynn:** Why would the insurers refuse to sell this insurance?

**Mr. Miller:** Ah! I am sorry, I misunderstood the question. The insurers would not refuse to sell insurance to the shipowner. What they would say is, "There is a limit to the amount of insurance we can sell you."

**The Chairman:** Did you not say last time, Mr. Miller, or at least infer that it was so, that it was actually uninsurable in this way, that no insurer would insure a risk of this kind? I think that is what Senator Flynn is driving at.

**Mr. Miller:** To answer you clearly, let us suppose that the bill as it is now in front of you were passed into law by the Canadian legislature. Underwriters' position would then be this, they would be prepared, or they could be prepared to sell a certain amount of insurance to a shipowner upon whom this burden was imposed. It would be a relatively small amount because of the concept of absolute liability in the bill. This cuts down the capacity of the insurance market, we submitted last week, unnecessarily. Thus, the shipowner would be in the position of having a certain amount of insurance, but being in a position of having to decide whether he should trade to a country where he had, theoretically at least, very much greater liabilities, without any insurance coverage to back them.

**Senator Flynn:** What is presently the coverage a shipowner can obtain with regard to his present liability?

**Senator Langlois:** The maximum coverage?

**Senator Flynn:** Yes, the maximum, which is not always limited, I suggest to you.

**Mr. Miller:** The normal range of a shipowner's liabilities, with two exceptions, which are very rare—one which Mr. MacGillivray has quite rightly mentioned and which I will come back to in a moment, if I may—with these two possible exceptions, a shipowner can limit his liability under your law and ours to certain figures calculated on a gross



tonnage basis. Using United States dollars, if I may, because I was talking United States dollars yesterday, it is \$67 per gross ton for liability for all his range of liabilities, other than loss of life and personal injury. There is an additional figure of another \$150 per gross ton for liabilities for loss of life and personal injury. At the moment, a shipowner can buy coverage for that range of liabilities based upon the limit I have stated.

**Senator Flynn:** Could insurance go over these limits presently?

**Mr. Miller:** The associations whom I represent, as you may know, do, in certain circumstances, and, indeed, in many circumstances, give an unlimited policy. The reason they give an unlimited policy is that there are very rare cases where a shipowner might have his ability to limit denied, for something which he had done which the courts might think should deny him that right to limit his liability; but which, in the opinion of his fellow shipowners, was an unfair burden on him. However, the associations I represent only give this unlimited policy in rare circumstances indeed, and would not and could not consider giving an unlimited policy to a shipowner to cover this additional burden of government clean-up costs of oil and other pollutants—they could not give a policy bigger than that they could provide by their own resources, backed by re-insurance.

**Senator Flynn:** I suggest your statement goes against one of the mottoes of Lloyds, that nothing is uninsurable, that Lloyds will cover any risk.

**Senator Denis:** What would be the difference between ship and car insurance? I have a car, and I have it insured for damage up to \$100,000. I may cause damage up to \$200,000, but the insurance company has accepted me to the extent of \$100,000. That would be similar to ship insurance?

**Mr. Miller:** If I may say so, it is not.

**Senator Hollett:** You do not have to pay \$150 a ton!

**Senator Denis:** No, but it is calculated; there is a range of rates for the car owner as well as for the shipowner.

**Mr. Miller:** I do not think it is quite a fair analogy because if you want to buy insurance coverage over your \$100,000, up to any foreseeable amount you can do so. In practi-

cal terms, with one motor car, it is difficult to envisage an accident causing more than \$100,000 damage. But should you so decide to do it, you have the ability to buy such insurance. What I am suggesting here is that the unfortunate shipowner has not the ability to buy the insurance anywhere in the world beyond the figures I suggested to the committee last week.

I should like, if I may, to answer Senator Flynn, sir, who said that Lloyds insure anything. I should like to answer him by repeating what I said last week, namely, that when an underwriter looks at the amount of liability he accepts on a risk he must look at how much he has got on that risk in relation to his total resources. This, sir, is the trouble with shipping. It is by far the biggest unit of transport there is in the world and, of course, it is by far the most expensive. As an underwriter I have to insure the hull of the ship; as an underwriter, I have to insure the cargo; as an underwriter I have to insure against liabilities stemming from the operation of the ship. Those are three enormous items. In addition, I am being asked to insure against another new liability. I have to look at the resources in my pockets, and in the pockets of my shareholders, and determine how much risk I can accept.

**Senator Flynn:** You are speaking as a shipowner there, and not as an insurer. What you are saying is that the shipowner cannot afford the additional premium.

**Mr. Miller:** No, I am trying to say, as an insurer and as an underwriter, how much I can accept on any one risk. Having regard to the world market this amount is limited to the figures I gave last week.

**Senator Denis:** Let us assume there is a liability of \$1 million.

**Mr. Miller:** Yes, sir.

**Senator Denis:** Suppose there is no such limitation in law. What is stopping you from insuring an owner for \$1 million?

**Mr. Miller:** I did not quite understand the question. Do you suggest there should be a limit?

**Senator Denis:** You said that it is very hard to insure a shipowner when there is no limitation of liability. You said that, did you not?

**Mr. Miller:** Yes, sir.



**Senator Denis:** Let us suppose there is a limitation, and you are in favour of limiting the liability, let us say, to \$10 million or to \$1 million?

**Mr. Miller:** Yes.

**Senator Denis:** What is stopping you from insuring the ship up to \$10 million, which would be in the legislation but which is not at the present time? What would be the difference for the insurer?

**Mr. Miller:** There would be no difference, sir; no difference at all. We, as insurers, can provide a policy up to the figures I gave last week. The trouble arises with amounts over and above that.

**Senator Denis:** So the shipowner takes a chance as to the difference. It is a similar situation to my own in respect of my car. If I cause damage to the extent of \$2,000 and I am insured for only \$1,000, then the insurance company pays \$1,000 and I am liable for the balance.

**Mr. Miller:** That is perfectly true. This is a point we made, that it is up to the shipowner to decide whether he wants to take such a chance. There are shipowners here today who might well say whether they are prepared to trade under such conditions. But, that is for the shipowner to answer.

**The Chairman:** In order to make this quite clear—and I can see Senator Denis' problem—as I understand it, what you are saying, in a nutshell, is that you will insure anything up to a certain amount, be it \$5 million or \$100 million, but you do not want to insure where the liability is unlimited, namely, where there is no top? Is not that what you are saying, Mr. Miller?

**Mr. Miller:** That is accurate, sir. We can insure a certain amount if the liability is imposed on an absolute basis. We can insure a greater amount if the liability is based, as we suggested it should be last week—and the United States authorities appear to be accepting this—on reversal of burden of proof. We can accept more. We get to a certain figure, and then say: "We cannot insure any more." If you have unlimited legislation then it makes it difficult to insure the amounts we suggested last week, but we believe it could be done. But, over and above the amounts we gave you last week, it cannot be done.

**Senator Flynn:** The legislation does not require that the ship owner be fully covered for the liability which would be imposed on him by section 495c.

**Mr. Miller:** Yes.

**Senator Flynn:** If there is not sufficient money from the insurance to meet the expenses incurred by the minister, the minister will do his best after that to recover them from other sources. There is always a limit on an insurance policy.

**Mr. Miller:** Yes.

**The Chairman:** As Senator Denis said a moment ago, if the ship owner is unable to get unlimited liability but is able to get insurance up to a certain figure, he has then to decide whether he can assume the rest of the risk himself. Is not that the point?

**Mr. Miller:** That is absolutely correct, sir, but it would be interesting to hear whether the ship owner would be prepared to trade to the country in those circumstances. From our investigations in our own country, we believe this is not so.

**Senator Langlois:** On the other hand, would not the Government, knowing that the ship owner is only partially insured, be reluctant to step in and spend huge sums of money in order to clean up beaches or remove wrecks?

**The Chairman:** Yes. Will you proceed, Mr. Miller?

**Mr. Miller:** I have one or two minor points, honourable senators, that I should like to make. Mr. MacGillivray suggested that the *Tritonica* did not push up the insurance rates. It so happens that this vessel was insured by one of the associations I represent, and this incident doubled the re insurance rate for the whole group. I cite this as an example of what can happen.

I attack, if I may, the concept of absolute liability on two grounds. One is capacity, and the other is cost. It is a fact, as I have stated, that if you have absolute liability you can insure a lesser amount on that basis. This, I think, from your point of view, is a pity. You want the ship owner to insure as much as is reasonable in the circumstances.

If I may, I should like to put one other thing in front of you. Absolute liability is going to cost to ship owners a very great deal of money. Rightly or wrongly, it is going to

cost them a great deal of money. This is something you might wish to consider in relation to your own merchant marine. It bears particularly heavily on the owners of inland craft, which are such an important part of your merchant marine.

A lot has been said about the *Torrey Canyon* and the Santa Barbara claims. The *Torrey Canyon* limitation figure is actually \$4½ million, and not something like \$2 million, as Mr. MacGillivray suggested. That, in a sense, is not the point. On the figures I gave you last week, which were \$134 a gross ton—or something in that range—the limitation figure for this risk alone, which is the risk of oil clean-up or pollution clean-up, would be in the range of \$9 million which, I submit, is a very substantial figure, and is the sort of figure which as a maximum a legislator might reasonably impose on a shipowner. One may say: "We have done what is reasonable. We have put a heavy burden on the ship owner, but it is reasonable that he should assume it. We have done all that reasonably needs to be done." In regard to the Santa Barbara disaster the estimates of the clean-up costs are very, very much different from those suggested to you. What happens is that every hotel owner in the area has tried to make a profit out of the thing. These are not things that are the subject of your discussion here. You are not talking about hotel owners' rights of recovery. You are talking about the Government's right of recovery of clean-up costs, and there the estimates of the clean-up costs are very much smaller. The figures are enormous because there has been so much hysterical talk about it, but the best figure I have from the United States administration itself is in the region of perhaps \$10 million, which is a very different figure from the one you have heard.

**The Chairman:** In the case of the *Torrey Canyon* was fault or negligence found? Was there a court adjudication?

**Mr. Miller:** No, it is the subject of pending court action in perhaps three jurisdictions, and certainly two, but absolute liability cannot be a question in the case of the *Torrey Canyon*.

Perhaps I may make this point; I submitted a very extensive list last week of all pollution claims which my associations have paid. In no case did the amount of the clean-up costs exceed \$67 per gross ton, and in no case would absolute liability have given the person

who cleaned it up one single cent more. It just did not come into it.

**The Chairman:** I see.

**Mr. Miller:** I do not think, sir, that I have any other particular point to make, except, if I might, should honourable senators wish to hear it, tell you the sort of attitude that the United States are taking. Would this be of interest to your committee, sir?

**The Chairman:** Do you wish to hear what the attitude of the United States is?

**Hon. Senators:** Agreed.

**Mr. Miller:** If I may put it like this, I and my colleague have now testified in front of three committees of the Congress of the United States. They started off last year with the same position you are starting off with now, with a bill based on unlimited liability and absolute liability as the basis of shipowners' liability. They listened very kindly to our representations last year and this year. In particular, sir, they listened to the point I made to you last week that anything they do must be done in consultation with you.

If they agree, as it seems very likely they will, to a figure of limitation, and here I must give you my own opinion, albeit based on very extensive discussions with the various committees and their staffs and their administration, if they accept the figure of perhaps \$10 million over-all, allied to a per gross ton formula in the region of perhaps \$100, they will be prepared to include in their legislation a provision whereby in the event of pollution occurring as has been described today, which could affect their shores and yours, or any other two neighbouring countries, Mexico as well as the U.S.A., for example, they would be prepared to introduce a provision whereby an insurance fund established under their law would be shared pro rata with other governments involved in the costs of cleaning up that other government's shores. This is a very important concept, and I was very impressed by the speed with which they took this point, that they should co-operate with you. It was something which would be very difficult, if they did not do so.

I stated that this is the way the United States legislation seems to be going. I only hope, sir, for the reasons I stated this week and last week that your legislature will feel able to proceed on a somewhat similar basis.

If there are any further questions, I should be pleased to answer them.

**The Chairman:** Would you like to comment, Mr. Miller, on the subject matter of the attitude of the United States authorities to deferential of their legislation until after these international conferences have taken place, as referred to last week?

**Mr. Miller:** I must say, sir, that they do not intend to defer their legislation. They are under very great political pressure because of the Santa Barbara case and others. If I may say, sir, one of my legal advisers in Washington said that it was as respectable for a congressman or senator to bring in a bill concerning oil pollution as is the institution of motherhood itself. Everybody is climbing on to the political bandwagon and, because of the political pressures, they do not intend to defer legislation.

**Senator Flynn:** When is it likely to pass?

**Mr. Miller:** As you know, sir, they got within a few hours, literally, of passing a bill based on \$5 million over-all limit and \$67 per gross ton before the presidential and other elections last November. Now, sir, it appears that the bill may very well be law by mid-summer.

**Senator Denis:** Could we not pass the bill rather than defer it until after the conferences? Then we could amend the bill, if it is found that the conferences cause radical changes to the way you insure your ships. That bill could simply be amended next year, could it not?

**Mr. Miller:** Yes, sir. I understand that point, but I would submit that the bill in its present form is, from an insurance point of view, taking such an extreme stand that it will be a pity to legislate and then have to change it or to have to consider changing it so radically thereafter.

**Senator Smith:** Mr. Chairman, in the course of the discussion here, we all have centred our attention on several newspaper headlines, incidents which have happened. Mr. Miller, you said a few minutes ago that a Congress of the United States, whether house representatives or members of their Senate, are all rushing to the bar of their house with bills concerning oil pollution because it is the popular thing to do. How common are these incidents which have worried them? It cannot

all stem from the famous Santa Barbara case, which does not even concern a ship at all. What is going on on their coasts that makes them so worried?

**Mr. Miller:** That is a very good question, sir. I understand the real problem which is worrying them is not so much pollution of the oceans but pollution of their inland waterways, particularly by industrial and other effluents. This apparently has rendered unusable river after river and lake after lake. This concerns them much more than the rather more headline news of the *Torrey Canyon* and the Santa Barbara which, as you rightly say, has nothing to do with a ship at all.

**Senator Smith:** So a lot of this legislation they are rushing to the clerk's office has nothing to do with what we are concerned with under this particular clause or section?

**Mr. Miller:** Quite correct, sir. What has happened is that the subject of the pollution of the oceans has got tacked on to bills dealing with other matters, as you may see simply from looking at the committee in which these bills are being dealt with, the Public Works Committee rather than what one would expect in marine matters.

**Senator Kinley:** When the hazard of dumping oil and other matters was being considered, the danger to the maritime provinces' fishing industry was not, I think, properly taken into account. The off-shore distance should be at least 1,000 miles in order to protect the industries, but it is only 100 miles. Even so, because the Gulf Stream washes the American coast and cleans the American coast they were not so concerned and they voted against this when we were trying to get the distance increased beyond 50 miles.

**The Chairman:** Mr. Miller, I think there is probably one more question the committee would be interested in having answered, and that is a double-barrelled question. Was fault or negligence found in the *Torrey Canyon* incident, and, secondly, can you give us any idea as to the attitude of the United States committee concerning the question of fault or negligence? In other words, in the event of pollution, should there be a finding of liability if there is no fault or negligence?

**Mr. Miller:** I think it would be fair to say that no lawyer would say that there was no fault or negligence on the part of those responsible for the navigation of the *Torrey*



*Canyon*. Undoubtedly there was fault or negligence on their part. I am speaking of something under jurisdiction, but I think this is accepted. The burning question on the *Torrey Canyon* is that concerning the old limits of liability; that is one point, and the second point is whether a government had under British or French law at that moment any right to recover clean-up costs. These are the burning questions of the *Torrey Canyon* rather than the question of fault or negligence. I think that is accepted.

With regard to the attitude of the United States Committee on Public Works, their bills all accept the concept of what we call reversal of the burden of proof, which Mr. Brisset detailed to you last week. They have abandoned the concept of absolute liability in favour of that of the reversal of burden of proof.

**The Chairman:** In other words, the vessel owner must prove there was no liability?

**Mr. Miller:** That is correct, sir, which is a very, very rare thing for him to be able to do.

**The Chairman:** Honourable senators, may I say on your behalf that we have greatly appreciated Mr. Miller's presentation before us, both last week and today. We are particularly appreciative of the information you have given us concerning the attitude of the Washington committees, before whom you have appeared, in regard to this problem, and we are especially happy to know that they are thinking of the problems vis-à-vis themselves and Canada. We wish you God speed back to Great Britain, and we will always be prepared to listen to you, and hope that you will come back again, so long as it is on a problem of insurance.

**Mr. Miller:** That is very kind, Mr. Chairman. I thank you for your remarks and your kindness, and that of honourable senators in listening to me.

**The Chairman:** Mr. Brisset, will you and Mr. Hyndman determine which one of you will speak next?

**Mr. Hyndman:** I think Mr. Brisset will speak next.

**The Chairman:** As you all know, Mr. Brisset is an attorney and counsel from Montreal. Will you put on the record whom you represent, Mr. Brisset, so we will have it in this particular record?

**Mr. Jean Brisset, O.C., Counsel, Canadian Chamber of Shipping and the International Chamber of Shipping:** Mr. Chairman and honourable senators, I represent the International Chamber of Shipping and the Canadian Chamber of Shipping. Among the constituent members of the latter are: The Shipping Federation of Canada, the Canadian Shipowners Association, the British Columbia Chamber of Shipping, and the British Columbia Tugowners Association.

Mr. Chairman, there has been reference made to the United States legislation presently under study. I understand there are many bills that have been introduced in Congress and in the United States Senate. One of the important ones is Bill S-7, on which Mr. Miller, I believe, gave you some of his reactions to what was likely going to be the fate of this bill. I have a copy of it with me. If it were of any use to your committee, I could leave it with the Clerk.

**The Chairman:** We would be glad to have it, Mr. Brisset.

**Mr. Brisset:** As Mr. Miller pointed out in answer to one question, this bill is much more extensive than the legislation before you in Bill S-23. It covers the problem of pollution arising out of, not only leakage of pollutants from ships but also from all kinds of other sources, industrial and otherwise.

There is one point I want to touch upon at this stage, and here I am not speaking like Mr. Miller, as an underwriter, but rather as a shipowner. He has pointed out to you that in the United States it seems to be accepted that there will be no liability without negligence, except for the reversal of the burden of proof, and that there will be a limit of the liability and, therefore, we will have a risk that is uninsurable.

Let us assume that the limit eventually will be \$10 million overall. I would like you to compare the competitive position of two shipowners trading to this side of the Atlantic, if one calls at a United States port and if the other calls at a Canadian port. If he calls at a United States port he will face a limited liability, provided there is negligence on his part, and, therefore, he will face a risk that he can insure and, I assume, even though at a high cost, still a cost that he can meet. If he comes to Canada he will face a risk that he can only partly insure, if there is no limit, and that may be more costly to him to insure,



in any event, up to a certain amount. Therefore, faced with these two competitive situations, you may very well find shipowners who will say, "We can only go to United States ports and pick up there the Canadian goods that the Canadian importer or exporter has either to receive or ship abroad."

There is, as you probably know, already some diversion of Canadian cargoes to U.S. ports for other reasons, but this is a trend which might develop even further if legislation of such a kind as Bill S-23 were adopted the way it presently reads.

There has been reference to the Navigable Waters Protection Act under which there is at present no limit of liability of the shipowner for the cost of removal of his wreck. In my earlier statement—and I think it is sufficiently important that I should repeat it at this time—I stated that from a practical point of view there was a difference in the situation because the amount of the liability or of the risk involved in this particular aspect was much less than in the case of an accident resulting in a ship being wrecked and pollution in addition being a possible risk.

Over a number of years there have been a number of vessels wrecked here in Canada, particularly in the St. Lawrence River, and they have had to be removed in practically all cases. I am referring to the major cases where the costs were quite high. This removal was effected by the owners themselves, of course with the support of their underwriters.

The most costly case was that already referred to, the removal of the *Tritonica* from the St. Lawrence River in the vicinity of St. Joseph de La Rive, below Orleans Island. The cost there was approximately \$2,800,000. The circumstances were extremely difficult, and it took months to complete the job. The work could only be done at a certain set of the tide. I think just a few hours per day could be worked. It is my understanding that it was the most costly job anywhere in the world that has ever had to be done.

**Senator Smith:** Was this a tanker?

**Mr. Brisset:** No, it was a bulk carrier, carrying iron ore. She was fully loaded at the time, and she went down in 60 to 80 feet of water, depending upon the state of the tide.

After cutting away her superstructure they had to dig a deep trench in the bottom of the river, and then in some way push her over

and bury her in that trench. She was quite a large vessel—26,000 tons deadweight, I believe, and possibly more. So, it was quite an extraordinary job to complete.

**Senator Langlois:** Possibly, Mr. Brisset, will you permit me to correct you? You said that this incident occurred in the vicinity of St. Joseph de la Rive when you should have said it occurred in the vicinity of Petite Riviere St. François.

**Mr. Brisset:** Thank you, senator.

I repeat that from a practical point of view we have a different situation in relation to the Navigable Waters Protection Act.

There is one problem that has been discussed at international meetings, on which perhaps my friend, Mr. Hyndman, will be better qualified to speak than I am, but I would like to say a few words about it. It has to do with the liability of the owners and operators of nuclear ships. It was realized that in the case of an accident involving an escape of the nuclear material, heavy losses and, therefore, heavy liabilities could be incurred. The discussions resulted in a proposed convention which, I believe, set the amount of the liability of the owners—and in that case, absolute liability—at a high level. But, on the other hand, it was realized that the insurance market could not insure the full risk, and that for the excess over and above the amount which the insurance market could take the Government of the flag of the nuclear ship involved in such accident would become the party responsible. This is, in general, the scheme.

As I said earlier, my friend, Mr. Hyndman, who has been attending some of these meetings, will be in a better position than I am to give more accurate details, but my point is to have you realize that, as Mr. Miller said, there is a limit upon what the insurance market can take by way of insurance, and that then it behooves the national governments interested to be the re-insurers, which would be the case here anyway. If there was a limit of, say, \$X million, and the costs of the cleaning up were in excess of that amount the Government would be more or less the re-insurer for the benefit of the nation at large, being the user, for instance, of this very essential commodity nowadays, oil.

There was during Mr. MacGillivray's evidence reference made by one of you gentlemen to what has happened in the Ste. Croix

River, and I think the question was asked whether the Government, without the legislation before you being enacted, could intervene. My reaction to this is that certainly in case of pollution of our rivers or shores, the Canadian Government has the right—and I might even go as far as to say it has the duty—to clean up our shore properties. The question is whether and to what extent the Government can recover from the party responsible.

This is really the issue before you because I do not think it can be said that the Government should do nothing unless this legislation is passed. Certainly, the Government can go in and do the job. The issue is who would bear the cost. Of course, in the case mentioned, about which we do not have too many details, if the Government were to attempt to recover from the ship, whether there is absolute liability, or only liability with negligence, the Government would have to prove first that it was the ship that was the agent of the escape of oil—in other words, that the oil came from that ship and not from another installation. In either case, that burden would be on the Government. Having established that this oil came from the only ship that went through this river in the recent days, then the question will be what has been discussed before you, namely, what should be the liability of that ship; should it be limited, or should it be absolute?

I think it is quite important to note that the United States legislators have accepted the two principles which we have developed before you—no liability without negligence, but with reversal of burden or proof, and a limit on such liability. But, there is more. Mr. Miller pointed out to you a problem which I had raised in my own brief, without offering any positive cure for it, and that is the problem which may result from the fact that accidents might occur involving pollution of the contiguous waters of the United States and Canada.

I think what is being done in the United States, or what is likely to be done in the United States, will give us a solution to the problem here. I am not suggesting at this stage any precise form of wording, but we could say in our own legislation that if such an accident were to occur then the limited fund which has to be made available by the owner—assuming that the Government in this legislation agrees to the limit—or the fund to

be made available by the owners, whichever is the higher, either in Canada or the United States, would then be shared proportionately by the Canadian and United States authorities, depending upon the amount of their respective expenses.

If the higher limit were \$10 million, and each Government were to spend \$5 million, then, of course, there is no problem, but if it were more than that on either side there could then be a division made on a proportionate basis.

There is one final point, Mr. Chairman and honourable senators, I should like to make, which has to do with the remarks of Mr. MacGillivray on the amendment I had proposed to section 495c, when I suggested that the owner should first be given the opportunity to do whatever was necessary to mitigate the danger of pollution, or to clean up pollution which had already occurred. He has explained the custom or practice followed by the department in the case of the removal of a wreck; in other words, the owner would be notified and asked to remove the wreck causing an obstruction to navigation and if he refused or did nothing the Government would intervene. This is to some extent the practice I am respectfully suggesting should be given effect to by the wording I have proposed to you, for the reasons I gave at that time, that it would provide an incentive to the owner to act so as to avoid possibly the destruction of his own vessel.

In the proposal I made to you before I think I chose words that permit the minister to take action quite quickly if the owner is doing nothing. The words appear on page 65 of the report of February 27, in the first column:

the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel . . . to be destroyed . . . and sold.

I respectfully submit that there is not likely to be any loss of time, and the urgency which always exists in circumstances of this kind will not be forgotten.

I said that was my last point. I apologize; I have another one. If there were to remain absolute liability on the owner or charterer I respectfully suggest it is important that such liability rests on only one the them, on the

owner if he is operating his own vessel, or if the vessel is under charter on the charterer. I explained before the iniquitous results which would obtain, particularly in the barge industry on the west coast. I think, as I have covered that fully, it is not necessary to go over it again, Mr. Chairman.

**The Chairman:** Thank you, Mr. Brisset. Are there any questions?

**Senator McElman:** One question, Mr. Chairman. You have proposed an amendment to 495c. Do you feel that this would cover a situation such as in the basin of the Halifax harbour where we have highly flammable cargoes and a vessel adrift leading towards shore installations. Do you feel that this would cover such a situation where the Crown would have to act immediately? There would be no time to contact the owner or the charterer. Would this not lift responsibility from him in law—I am not a barrister—if the Crown stepped in without any referral to the owner?

**Mr. Brisset:** Senator, I have difficulty in seeing in my own mind how such a situation could develop this quickly, that action would have to be taken within a matter of minutes.

**Senator McElman:** We have had two such situations in the harbour of Halifax.

**Mr. Brisset:** Then action to be taken I assume would be to prevent the vessel from running ashore, being sent to a rescue.

**Senator McElman:** Or by explosion to damage shore property.

**Mr. Brisset:** Yes, I think in a case like this, certainly not only the Government, but any, for instance, salvor in the vicinity would be perfectly entitled to take whatever action is necessary. What you are describing to me looks more like a case of salvage with which you may be familiar in maritime law, when a ship is in distress anybody can go to her rescue and if the services rendered are victorious in helping salvaging the vessel the salvor will be given an award. This is something that in maritime law has been devised to encourage people to go to the assistance of vessels.

**Senator Smith:** Mr. Brisset, Senator McElman may be thinking in terms of the first Halifax explosion. I do not have any idea of what liability was for those two ships

involved in that horrible disaster where thousands of people lost their lives. Under this limitation of liability of course one of those awful things happening could not be—I do not think you could cover it. My gracious, think of the...

**Senator McElman:** Let me complete my...

**Senator Smith:** Let me finish my sentence, then it will look better on the record. Certainly, if a navy tow came along and towed that thing out to the harbour he would have every legal right to do that I suppose.

**Mr. Brisset:** I think he would have every legal right to do it and would probably be given a reward for doing it if the ship eventually was saved by the efforts of the salvor.

**Senator McElman:** I am not thinking of either salvage or the limitation of liability. I am only questioning whether this lifts the liability from the owner if the Crown should move in without any consultation with the owner.

**Mr. Brisset:** No, that is not the intention.

**Senator Denis:** When you talk about the liability, do you mean to say that, if damages had been caused to your private property or injury had been caused to an individual, and let us suppose the damage all told were \$20 million and the limit were \$10 million, do you mean to say that the individual would get only half of the damage caused to him by the shipowner?

**Mr. Brisset:** This is the principle, yes, of limitation. If all the claims exceed the limited fund, then everybody gets a proportion. But I should like to point out to you, senator, that in the bill before you we are only dealing with Government's expenses, not the expenses which the owner of shore property may incur himself to clean up his own installations. This would be covered, as I explained in my previous statement, by another fund which is a fund that would be provided by the ship under the present legislation, the Canada Shipping Act.

**Senator Denis:** Do you mean to say that with that limitation the Government would be responsible for the excess?

**Mr. Brisset:** The Government would be responsible for the excess or would have to assume the excess of its own expenses over and above the amount paid by the shipowner



pursuant to the limit of his liability, whatever it might be.

**The Chairman:** Honourable senators, it seems obvious that we cannot finish our proceedings on this bill today. I suggest we adjourn our deliberations until next Thursday at 11 o'clock, at which time Mr. Hyndman will be here and we can also hear any further representations from the gentlemen from Hovercraft. The meeting is terminated.

The committee adjourned.



## APPENDIX E

### PACIFIC HOVERCRAFT LTD

#### A SUBMISSION IN THE MATTER OF PROPOSED CHANGES IN THE CANADA SHIPPING ACT UNDER STUDY BY THE SENATE OF CANADA, STANDING COMMITTEE ON TRANSPORTATION.

Air Cushion Vehicles (Hovercraft) have recently reached a stage of development where effective commercial service can be provided if appropriate operating rules and regulations and stabilizing government controls on licencing exist.

The unique operating capabilities of hovercraft provides excellent potential for the craft in coastal marine areas and in the Arctic and Sub-Arctic regions of Canada. The public benefit which can be made available through utilization of Air Cushion Vehicles, particularly in remote northern areas, can only be realized if the introduction of a commercial service is properly regulated and given adequate time to stabilize and become commercially feasible.

This submission is intended to describe, in very brief form, the problems which presently exist and to suggest methods of correcting difficulties subsequently enabling hovercraft to provide the required public benefit.

The areas of importance are outlined hereafter, as per the following index.

Part I Licensing and Commercial Operators

Part II Provision of Operating Rules & Regulations

Part III Federal Tariffs and Taxes

Part IV Summary

#### Part I

#### LICENSING OF COMMERCIAL OPERATORS

1. The management of Pacific Hovercraft Ltd. feels that licensing of commercial operators should be retained by Federal Government Authorities.

2. The provision of Hovercraft services requires that sufficient numbers of craft be operated to enable necessary inventory support, overhead costs, and associated non-operating expenses. Subsequent cost benefits resulting from the operation of a fleet of simi-

lar craft includes reduced overhead costs per unit or per operating hour.

3. The establishment of a fleet of Hovercraft depends upon the type of services to be provided, the area of operation and the experience of company personnel.

4. To be able to operate sufficient craft, as per paragraph 2, operations must be carried out at various locations in Canada. Pacific Hovercraft Ltd. presently provides services between the Cities of Vancouver and Nanaimo and will be introducing services between the Cities of Vancouver and Victoria on or about the end of April, 1969.

5. The company has been licenced by the Canadian Transport Commission, after lengthy negotiation and a competitive Public Hearing, held in Victoria, British Columbia, in December of 1967.

6. Pacific Hovercraft Ltd. had difficulty in having licence applications processed until a Federal Justice Department ruling indicated that they would be classified as aircraft. At this time necessary action was taken by the Air Transport Committee, Canadian Transport Commission, with the subsequent approval of the licences applied for.

7. The great difficulty encountered regarding Federal Government licencing included heavy expense and extensive effort on the part of Pacific Hovercraft Ltd.

8. After licence was approved, Pacific Hovercraft Ltd. had to make necessary submissions regarding an appeal to the Minister of Transport by another applicant for licences. Further cost, time and effort was required in this regard.

9. To allow the required size of proposed operations and to introduce needed economies, as set out above, activities will include services at various points in Canada. The present routes in the Southwest Coastal regions of British Columbia are expected to expand to include flights to Seattle in the United States. Introduction of Hovercraft in the Northwest Territories is anticipated this coming summer. Further locations where the possibility of operating is being studied include the Great Lakes area, regions in the Atlantic Provinces, and points where charter

services can be provided to exploration, forestry and mining organizations. Subsequently, Hovercraft services will be Interprovincial and in Pacific Hovercraft's instance, International.

10. Our understanding of legislation affecting the licencing of commercial transport services, suggests that should the Canada Shipping Act apply to Air Cushion Vehicles, Provincial authorities may be the regulating body as concerns operating licences. This is felt to be undesirable because future hovercraft activities will be carried out throughout Canada and since the expected favourable impact on the transportation industry and associated public benefit, will be the result of nation wide operations.

11. Because of the wide ranging type of services anticipated in varying environments, and under different operating conditions, it is felt that Federal Government authorities must be retained to allow effective control of the growth of the Hovercraft industry with subsequent benefits being available to the Canadian people.

12. Experience regarding licencing and control of other forms of transport service, particularly aviation, indicate the need for regulatory bodies of a Federal nature. Pacific Hovercraft Ltd. submits that similar rules should apply to the Air Cushion Vehicle industry.

13. Because Hovercraft will be operated under marine land and other conditions indicative of all forms of Canadian regions, Federal licencing under specific air cushion vehicle guide lines is necessary.

## Part II

### PROVISION OF OPERATING RULES AND REGULATIONS

1. The problems associated with the operation of air cushion vehicles under present rules and regulations are immense. It would appear that Federal Government authorities feel that the air regulations are completely inappropriate for such purposes. Pacific Hovercraft Ltd. submits that the Canada Shipping Act regulations are even more inappropriate to the point of making commercial operations impractical.

2. To provide for the peculiar circumstances which arise when air cushion vehicles are operated in the marine environment, special conditions are included and unapplicable

rules of the Canada Shipping Act are excluded in the vehicle flight Permit and in the company's Operating Certificate as issued by marine authorities. If all the inappropriate rules contained in the Canada Shipping Act were excluded from Hovercraft regulations the list of exclusion would include the majority of the Act in question.

3. If proper rules are to be set out for the operation of air cushion vehicles and the Canada Shipping Act is the regulatory authority, it will be a matter of eliminating the vast amount of rules therein and leaving semi-adequate or antiquated guide lines to supervise the operation of Hovercraft. This must result in a poorly controlled, inconceivable operating situation which will make commercial activities impractical if every effort is to be made to follow the authorities in effect.

4. Pacific Hovercraft Ltd. has been operating for about 4 months with scheduled services being in operation for about 2 weeks. During this time the problems encountered while attempting to operate under the terms of the Canada Shipping Act and associated directives include a variety of circumstances which economically and operationally cause a detrimental effect on the operation of Hovercraft. In all instances difficulties have been the result of the inadequacy outlined below.

(a) The requirement to use marine style radio, accessory and associated equipment which cannot be installed in a Hovercraft due to its aircraft type crew cockpits, requirements for lightweight products and density seating arrangements.

(b) The licencing of pilots is presently dependant upon the English manufacturer, British Hovercraft Corporation, and no specific requirements have been set out by Federal authorities and no Canadian licence is available. Training of radar operators presently includes the requirement to have marine style plotting instruction given which will never be used on Hovercraft and in fact, negatively effects the actual operating techniques used on hovercraft operations. The closest comparison for crewing is a combination of aviation pilots and mariner. The only practical way of setting out a crew requirement is the actual implementation of air cushion vehicles' rules.

(c) Difficulties in present necessary navigation procedures exist which create a



high degree of confusion and difficulty for a commercial Hovercraft operator. Because of speed, manoeuvrability and other operating characteristics of Hovercraft which completely differ from current ships, it is felt that air cushion vehicles must have their own fixed rules and regulations set apart from any other activity.

(d) Requirements for fuel reserves have been set out to include sufficient reserve to equal the length of time taken on the routes in question, which greatly exceeds any normal, safe requirements. This is a portion of the problem in developing proper rules and regulations for air cushion vehicles.

(e) Numerous other requirements of the Canada Shipping Act include the type of rules intended to govern ships consistent with other maritime nations. In the majority of cases, such rules cannot be applied to Hovercraft.

5. Throughout our operational program, Department of Transport officials have assisted in altering the many impractical rules. Future problems are expected to cause ever increasing and time consuming impractical rules negotiations under the existing situation.

6. There is no way of comparing air cushion vehicles and other forms of transportation. The operating techniques, practices and procedures utilized cannot be compared with any other form of service. The only similarity is that the environment that Hovercraft operate in is similar to that used by marine vessels.

7. The major differences between ship and Hovercraft operating procedures are as previously outlined as follows:

(a) Navigation; air cushion vehicles will react in a manner similar to aircraft when taking into consideration wind effect. Drift is notable and the craft's heading on numerous occasions is different from the actual track. Therefore use of normal marine navigation lights presents difficulties since a Hovercraft could be on a track directly towards a point but heading is a different direction. The indicated lights would not show a relatively true picture of a Hovercraft's direction of movement to another vessel.

(b) Hovercraft move at a speed much greater than normal marine traffic. They

are able to avoid other water traffic with ease and subsequently operational needs can be compared to power driven aircraft which have the responsibility to avoid a balloon or glider. A Hovercraft moving at 60 miles per hour can readily cross the bow of a ship moving at 10 miles per hour at a relatively close range and with great safety.

(c) Piloting and navigation of Hovercraft is very similar to that of aircraft. The requirement to be aware and knowledgeable of marine regulations and rules of the road is mandatory. This combination of aviation and marine techniques in conjunction with the unique operating methods known only to Hovercraft make it impractical to regulate the operation of air cushion vehicles under any preset rules, particularly regarding crew requirements.

8. It is our understanding that the Canada Shipping Act will be altered in the near future because many older, unused rules are included therein. Pacific Hovercraft submits that the regulation of air cushion vehicle operations by an Act which itself is to be amended due to its unsuitability, will not assist the Hovercraft industry and will create hardships which could well preclude expansion of commercial activities. The placing of a new and different form of transportation service under existing regulations, which cannot practically be complied with, will harm the Hovercraft industry. Elimination of parts of the Canada Shipping Act is not a practical solution because the great majority of the Act would be involved. We submit that the most effective means of developing a controlled and stable Hovercraft industry in Canada is to introduce specific rules which effectively control the operations of air cushion vehicles from the start. Should present marine rules and regulations be applied, it is felt that uncontrolled difficulties will result and future changes will ultimately be needed. If rules are implemented now the problems associated with a change at a future date can be eliminated and Hovercraft can more effectively be a helpful part of the Canadian Transportation scene.

9. Members of Pacific Hovercraft Ltd. include the world's most experienced technical and operating personnel. Operating

experience includes four months of trial operations in the Southwest Coastal regions of British Columbia, five years of investigation into the potential and operating principals of Hovercraft, extensive development of charter programs in Arctic regions and other points, and completion of associated studies regarding air cushion vehicle operations.

10. At the present time the Canadian Coast Guard operates Hovercraft in the coastal waters of British Columbia. Knowledge and experience concerning the use of air cushion vehicles can be obtained from this source. Federal Government studies also provide excellent information on operating requirements.

11. Valuable assistance is available from regions where air cushion vehicles have operated including England, Scandinavian countries and the United States.

12. We submit that specific, complete and effective regulations can be developed utilizing the knowledge of persons presently operating Hovercraft in Canada, though review of surveys and reports completed by private and governmental bodies of other countries.

13. The implementation of separate authorities governing the use of Hovercraft in Canada will assist in the development of the industry, prevent hardships from being placed upon commercial operators, and generally be in the public interest because of the expected beneficial result offered by growth of air cushion vehicle use.

14. It is suggested that it is far wiser to start new regulations when a new vehicle is put into service, including pertinent and appropriate rules from other Acts, such as the Canada Shipping Act and the Aeronautics Act, as may be required, rather than using old impractical authorities and deleting necessary portions thereof.

15. Pacific Hovercraft Ltd., in conjunction with the manufacturers representatives, other Hovercraft operators and experienced personnel associated with the air cushion vehicle industry have organized an Advisory Group to privately gain insight into the many existing and future problems associated with regulations. It is felt that this group could effectively assist in setting out Hovercraft rules in Canada.

16. The greatest benefit provided in the form of public transportation by Hovercraft is a result of the unique, fully amphibious capability of some air cushion vehicles. The result is that no present rules can apply to hovercraft because its operating areas include marine, ice and land locations.

17. To allow any form of effective development in the Hovercraft industry, a single regulating authority should be in effect and govern the operation of air cushion vehicles in all their operating configurations.

### Part III

#### FEDERAL TARIFFS AND TAXES

1. The operation of Hovercraft in Coastal waters of British Columbia, will be primarily as passenger and cargo carriers in competition with ferry boats.

2. Because Hovercraft were initially declared to be aircraft, Federal Sales taxes were required. 12% Tax has been paid on the initial SRN-6 hovercraft imported by Pacific Hovercraft Ltd.

3. Since Coastal operations provide equivalent services to competing ferry systems, it is felt that application of Federal Sales taxes is unjust because transportation vehicles operated by competitive organizations are tax exempt because of their ability to obtain a "Coasting Licence".

4. We submit that no matter what legislative authority governs Hovercraft, that their use in a marine environment should justify the provision of "Coasting Licence" relief from taxes.

5. When Hovercraft are operated in Arctic regions of Canada we submit that the expected economic benefits and public advantages which will be provided should justify the exclusion of payment of Federal Sales taxes.

6. We submit that any alteration in legislation which will allow future relief from the payment of Federal Sales taxes should be retroactive to allow a claim to be made for a rebate of taxes paid on the initial Hovercraft entered into Canada, as per paragraph 2 above.

7. Negotiations are presently being carried on between Pacific Hovercraft Ltd., and the Federal Government, Department of Finance, regarding the above.



## SUMMARY

## Part IV

This submission is intended to very briefly indicate the problems currently effecting Hovercraft operations in Canada and to suggest that the expected notable benefit which can be provided to the Canadian public might be affected in a derogatory manner, unless specific, qualified and complete rules and regulations are implemented.

In summary, of the previous Parts, please note the following.

Part 1; Pacific Hovercraft Ltd. submits that to allow proper and justified development of a national Hovercraft industry, that operating, licencing authorities must be provided by the Federal Government.

Part 2; Pacific Hovercraft Ltd. submits that to allow proper, safe and economical

development of operational Hovercraft activities, that present governing rules and regulations and possible proposed regulating authorities, the Canada Shipping Act, are totally inadequate. We further suggest that separate rules and regulations be prepared and put into effect as rapidly as possible.

Part 3; Pacific Hovercraft Ltd. submits that because of tax priveleges provided competitive forms of transportation and because of the extreme public interest in developing the most effective transportation in Canada's Northern regions, that Federal Sales taxes relief should be afforded air cushion vehicles.

SUBMITTED THIS 6th DAY OF MARCH, 1969, BY P. BARRY JONES, PRESIDENT, FOR YOUR KIND CONSIDERATION.

## APPENDIX F

SUPPLEMENT TO APPENDIX "A" SUBMITTED BY PETER N. MILLER—FEB. 27, 1969

## SCHEDULE

November 1967

Date of Incident	Name of Ship	Place and Nature of Incident	Amount of Claim (Over £5000)	Was limitation of liability involved	Was the carrier held 100% to blame
			£		
21.5.60	<i>Mary Billner</i> .....	Gashaga, Sweden, oil spillage due to fractured valve spindle.....	8,960	No	Yes
July 1960	<i>Alkaid</i> .....	Grounding—East River.....	26,500	No	Not yet known
10.9.60	<i>Arcturus</i> .....	El Segundo, Cal. U.S.A. Oil discharged due to faulty closure of valves. Contamination of beaches and shore property....	11,182	No	Yes
15.9.60	<i>Bideford</i> .....	Southampton Water. Spillage due to faulty closure of valve.....	8,182	No	Yes
17.12.60	<i>Sister Katingo</i> .....	Newhaven.....	71,381	No	Yes
30.12.60	<i>Crinis</i> .....	Los Angeles.....	16,085	No	Yes
25.1.61	<i>Esso Lyndhurst</i> .....	Poole Harbour—Collision with "Mogilev". Harbour and beach pollution.....	8,640	No	Two-thirds
31.8.61	<i>Marathon</i> .....	Southampton Water. Spillage due to faulty closure of valve.....	9,996	No	Yes
13.10.61	<i>Vibex</i> .....	Grounding St. Lawrence Estuary. Leaking oil damage yachts, fisheries.....	90,861	No	Yes
14.2.62	<i>Eagle Courier</i> .....	Grounding Tokyo Bay. Leaking Oil damaged edible seaweed beds.....	195,430	No	Yes
27.6.62	<i>Olympic Falcon</i> ....	Los Angeles. Oil Spillage.....	12,253	No	Yes
21.11.62	<i>Esso Libya</i> .....	Tonsberg (Norway) faulty valve manipulations during discharge causing considerable spillage with coastline contamination.....	10,762	No	Yes
26.12.62	<i>Partula</i> .....	Providence. Oil Spillage causing damage to beaches, pier, etc.....	11,723	No	Yes
5.6.63	<i>World Mead</i> .....	St. Nazaire. Oil Spillage.....	21,181	No	Yes
30.11.63	<i>Zelos</i> .....	Grounding at Stockholm. Oil pollution from leaking bunker oil.....	82,260	No	Yes
10.1.64	<i>Brother George</i> .....	Stranding on Dry Tortugas Contamination of National Park and Bird Sanctuary by leaking oil.....	7,923	No	Yes
Feb./Mar. 64	<i>Lady Dorothy</i> .....	Libya/Delaware City.....	6,801	No	Yes
20.8.64	<i>Mormacsurf</i> .....	Los Angeles.....	7,466	No	Yes
1.12.64	<i>C. T. Gogstad</i> .....	Grounding at Bruno. G. of Bothnia. Contamination of Beaches.....	155,088	No	Yes
Jan. 65	<i>Rice Queen</i> .....	San Francisco.....	8,711	No	Yes
9.2.65	<i>Ardgroom</i> .....	Oil Spillage at Fremantle due to opening of wrong valve.....	6,311	No	Yes

SCHEDULE

November 1967

Date of Incident	Name of Ship	Place and Nature of Incident	Amount of Claim (Over £5000)	Was limitation of liability involved	Was the carrier held 100% to blame
			£		
20.2.65	<i>Esso Lincoln</i> .....	Vessel grounded at Avocat Rock and about 20,000 tons of crude escaped. Many small islands contaminated. No claims seriously pressed.....	10,000	No	Not yet known
3.8.65	<i>Esso Amsterdam</i> ....	During discharging operations at Fawley and due to the overboard stripper valves not being properly closed, a quantity of heavy fuel oil was allowed to escape into the harbour. In spite of immediate remedial steps, severe pollution, including the cleaning of no fewer than 273 yachts and boats (the incident occurred during Crowes week) which was carried out under the supervision of a surveyor appointed by the Association amounted to £4,757.4s.7d. In addition the Master was prosecuted and fined including costs, the sum of £521.....	35,000	No	Yes
19.8.65	<i>Sarah Bowater</i> .....	During the operation at Holmsurd of pumping the engine room bilges a quantity of oil was allowed to escape into the harbour waters. Immediately the escape was noticed, pumping was stopped and special steps were taken to prevent pollution of a large area of the harbour and also a considerable number of floating logs which were in store. Approx. 18,750 logs were affected, and cleaning charges of Sw.Cr. 10.29 per log had to be accepted. There were in addition charges for cleaning jetties and parts of the harbour area, all necessary arrangements being made by the Association's Stockholm lawyers.....	8,519	No	Yes
23.9.65	<i>Esso Wandsworth</i> ....	R. Thames.—Collision with <i>Moerdijk</i> .....	35,000	No	Not yet decided
21.11.65	<i>Achilles</i> .....	Grounding of Daikoku Jima leaking fuel oil damaged Murorn Aquarium and property.....	8,433	No	Yes
June 1966	<i>Bidford Priory</i> .....	Oil Pollution Rijeka Bay Contamination of beaches etc.....	17,938	No	Yes
5.9.66	<i>Protostatis</i> .....	St. Lawrence Seaway. Oil pollution due to spillage during trimming of ship.....	6,624	No	Yes







First Session—Twenty-eighth Parliament

1968-69

# THE SENATE OF CANADA

## PROCEEDINGS

### OF THE

### STANDING SENATE COMMITTEE

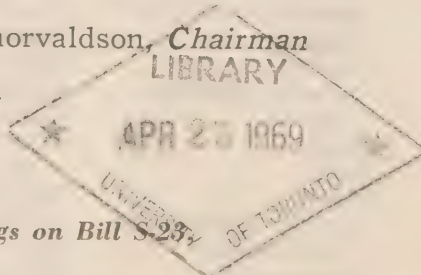
### ON

# TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

LIBRARY

No. 8



*Third and Final Proceedings on Bill S-23*

intituled:

An Act to amend the Canada Shipping Act.

THURSDAY, MARCH 13, 1969

### WITNESSES:

*Department of Transport:* Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch. *Pacific Hovercraft Ltd.:* John P. Nelligan, Counsel. *Hoverwork Canada Ltd.:* A. B. German, President. *Canadian Chamber of Shipping:* Jean Brisset, Q.C., Counsel. *Dominion Marine Association:* P. R. Hurcomb, General Manager.

### REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

STANDING SENATE COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine	Hollett	Molson
Blois	Isnor	O'Leary ( <i>Antigonish-</i> <i>Guysborough</i> )
Bourget	Kinley	O'Leary ( <i>Carleton</i> )
Burchill	Kinnear	Pearson
Connolly ( <i>Halifax</i> <i>North</i> )	Langlois	Petten
Davey	Lefrançois	Rattenbury
Denis	Macdonald ( <i>Cape</i> <i>Breton</i> )	Smith ( <i>Queens-</i> <i>Shelburne</i> )
*Flynn	*Martin	Sparrow
Fournier ( <i>Madawaska-</i> <i>Restigouche</i> )	McElman	Thorvaldson
Gladstone	McGrand	Welch—(30)
Hayden	Michaud	

\*Ex Officio member

(Quorum 7)

## ORDER OF REFERENCE

Extract from the Minutes of the Senate, Tuesday, January 21, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Bourget, P.C., for second reading of the Bill S-23, intitled: An Act to amend the Canada Shipping Act.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

THURSDAY, March 13, 1969.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11.00 a.m.

*Present:* The Honourable Senators Thorvaldson, *Chairman*, Aseltine, Blois, Bourget, Burchill, Denis, Flynn, Gladstone, Isnor, Kinley, Kinnear, Langlois, Macdonald (*Cape Breton*), McGrand, Pearson, Petten, Robichaud, Smith (*Queens-Shelburne*) and Sparrow—19.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Consideration of Bill S-23, "An Act to amend the Canada Shipping Act", was resumed.

The following witnesses were heard:

*Dept. of Transport:* Jacques Fortier, Q.C., Counsel and Director of Legal Services; R. R. MacGillivray, Director, Marine Regulations Branch.

*Pacific Hovercraft Ltd:* John P. Nelligan, counsel.

*Hoverwork Canada Ltd:* A. B. German, President.

*Canadian Chamber of Shipping:* Jean Brisset, Q.C., counsel.

*Dominion Marine Association:* P. R. Hurcomb, General Manager.

Documents tabled by Jean Brisset, Q.C., were ordered to be printed as Appendix G.

On motion of the Honourable Senator Langlois, it was *resolved* to report the Bill with the following amendments:

1. *Page 15:* Strike out lines 17 to 41, both inclusive.

2. *Page 17:* Strike out lines 17 to 21, both inclusive, and substitute therefor:

"(a) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;"

At 12.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

John A. Hinds,  
*Assistant Chief,  
Committees Branch.*

## REPORT OF THE COMMITTEE

THURSDAY, March 13th, 1969.

The Standing Senate Committee on Transport and Communications to which was referred the Bill S-23, intituled: "An Act to amend the Canada Shipping Act", has in obedience to the order of reference of January 21st, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 15*: Strike out lines 17 to 41, both inclusive.
2. *Page 17*: Strike out lines 17 to 21, both inclusive, and substitute therefor:  
“(a) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;”

All which is respectfully submitted.

GUNNAR S. THORVALDSON,  
*Chairman.*

## THE SENATE

### THE SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Thursday, March 13, 1969.

The Senate Committee on Transport and Communications to which was referred Bill S-23, to amend the Canada Shipping Act, met this day at 11 a.m. to give further consideration to the bill.

**Senator Gunnar S. Thorvaldson** (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, as you know, we are dealing with Bill S-23, an act to amend the Canada Shipping Act. I will ask Mr. Fortier, Counsel for the Department of Transport, to make a submission to us.

**Mr. Jacques Fortier, Q.C., Counsel and Director of Legal Services, Department of Transport:** Mr. Chairman, honourable senators, Mr. P. Barry Jones and Mr. John P. Nelligan represented to the committee last week that the licensing of hovercraft operations should be provided by the federal Government and not by the provinces, and that regulations governing hovercraft should be put into effect as soon as possible. Mr. German also stated last week that the International Civil Aviation Organization has recommended that air cushion vehicles be removed from the classification of "aircraft". He also stated that in the United Kingdom an air cushion vehicle is by law a ship when operated over water and a land vehicle when operated on land.

I would point out that there are various kinds of air cushion vehicles. In France there is now in operation what is called an air cushion train, the wheels of which never leave the tracks, but the air cushion mechanism incorporated in the train considerably lightens the weight of the train on the wheels. There has also been developed what is called an air cushion truck, in which the same principle is applied; the same mechanism is incorporated in the truck so that the weight of the vehicle on the wheels is considerably lightened.

Finally, there is the hovercraft that operates exclusively over water, and that is the vehicle that Mr. Jones' company operates in a ferry service between Vancouver and Vancouver Island.

The hovercraft is theoretically an aircraft. However, it operates only a few inches above the ground and therefore the regulations applicable to aircraft cannot be applied to hovercraft. This is the basic reason why hovercraft have been taken out of the Aeronautics Act and brought under the Canada Shipping Act when operated over water.

The recent bill to amend the Aeronautics Act has now received Royal Assent, and the amendment of the definition of "aircraft" in that act, which removes air cushion vehicles from the provisions of the Aeronautics Act, will come into force upon proclamation by the Governor in Council.

The definition of air cushion vehicle in this bill to amend the Canada Shipping Act will come into force upon proclamation. I would like to point out that the reason for these two amendments to come into force upon the proclamation is not as suggested by Mr. Nelligan, being that the Department of Transport may have some reservations about removing air cushion vehicles from the Aeronautics Act. The reason for the proclamation being necessary is that the two amendments in the Aeronautics Act and in the Canada Shipping Act must be brought into force simultaneously, and that before air cushion vehicles may be brought under the Canada Shipping Act the department must prepare regulations for their control.

The remaining question as to whether these air cushion vehicles, when they are operated on land, will come under federal or provincial jurisdiction, is now under active consideration.

Mr. Chairman, it is felt that when air cushion vehicles are operated over water they may be equated to ferries; however, ferries

come under the provisions of section 92.10 of the British North America Act.

**Senator Pearson:** Why would they be considered as ferries?

**Mr. Fortier:** Because they are lines of communication. They operate as communication between two points on a regular basis or otherwise.

**Senator Pearson:** A ferry would be just across a stream or a river.

**Mr. Fortier:** Essentially a ferry may be considered to be a ship, but they could be classified as ferries because they are engaged in the transport of passengers between two points on a more or less regular basis.

**The Chairman:** Is it not true also, Mr. Fortier, that most streams and rivers are navigable waters and hence under the jurisdiction of the federal Government?

**Mr. Fortier:** For navigational purposes that is so, Mr. Chairman, as pursuant to section 92 of the British North America Act. Lines of communication within a province come under the exclusive jurisdiction of that province. That would be why ferries and hovercraft could not be brought under federal jurisdiction for licensing purposes as was suggested by Mr. Jones.

**Senator Pearson:** Supposing you had a hovercraft service between Newfoundland and Prince Edward Island. Those are separate provinces.

**Mr. Fortier:** In that case, sir, the licensing would come under the federal Ferries Act and they are operated interprovincially or internationally.

**Senator Burchill:** Or between Canada and the United States.

**Mr. Fortier:** That would be so, sir.

Mr. Chairman, there is another item that we feel should be brought to the attention of your committee. On page 17 of the bill in section 712A, paragraph (a) there is provision for the making of regulations to prescribe the qualifications of the crews and the maintenance of hovercraft. We would like to propose an amendment that would read as follows:

(2) The Governor in Council may make regulations

(a) providing for the licensing of persons acting as members of the crew or em-

ployed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;

**The Chairman:** Where do you suggest that amendment?

**Mr. Fortier:** Mr. Chairman, that would be on page 17, paragraph (a).

**The Chairman:** Paragraph (a). Yes, of sub-clause (2) of clause 27 of the bill.

**Senator Burchill:** You mean to strike out this paragraph and substitute that?

**The Chairman:** It would be proposed to strike out subparagraph (a). Honourable senators, we will come to the question of this amendment when we consider the bill clause by clause. We need not consider it further at the moment.

Mr. Fortier has nothing further to say now. With your permission, I would suggest that we ask Mr. Nelligan or Mr. Jones, or both of them, if they would like to say something in response to the submissions made by Mr. Fortier.

**Senator Langlois:** Mr. Chairman, before we proceed with Mr. Nelligan, I would like Mr. Fortier to confirm if my interpretation of paragraph (a) of subsection (2) of section 712A on page 17 is correct. Is it the intention of the department to prescribe the qualifications of personnel engaged in the maintenance and repairs of hovercraft even though they are not members of the crew of that hovercraft?

**Mr. Fortier:** For the purpose of the engineers that would be engaged in the repair of these air cushion vehicles, it is the intention that they should be licensed.

**Senator Langlois:** We are getting out of the Canada Shipping Act. If we are going to control qualifications of persons working in shipyards or establishments or where repairs and maintenance is done to hovercraft, are we not getting out of the scope of the Canada Shipping Act?

**Mr. Fortier:** Senator, I might point out the provisions such as this in respect of hovercraft would be generally in line with a similar provision in the air regulations made under the Aeronautics Act, where the department controls and licenses not only the pilots, but also the members of the ground crews



engaged in the maintenance and repair of aircraft.

**Senator Langlois:** Two wrongs do not make a right.

**The Chairman:** Are there any further questions in regard to this clause? We will come to that again, of course, Senator Langlois, when we consider the bill later on.

Mr. Nelligan, would you like to address the committee?

**Mr. John P. Nelligan, (Counsel, Pacific Hovercraft Ltd.):** Mr. Chairman, it is difficult to add very much to what Mr. Fortier has said. However, I would like to make one correction with respect to his statement that hovercraft operate exclusively over water. Of course, that is our very point: they do not. Our hovercraft at the present time are maintained at the Vancouver Airport, which is very much on dry land. We are not exclusively over water, unlike ferries which are; and this creates a very serious problem. We are operating as an aircraft until we taxi off the runway and then suddenly we become a ferry when we hit the salt water. Therefore, the problem is not quite as simple as Mr. Fortier suggested.

The other great difficulty we have in this question is that of licensing. Because my client acted in good faith and assumed the interpretation of the Department of Justice, we have gone to some expense now in qualifying under the Aeronautics Act. We have in fact received licences under the Aeronautics Act only after very long and prolonged hearings and complying with a number of very stringent regulations.

If we find—just as we start in business—that the licences are valueless and we must start applying to provincial authorities and start all over again, we are very seriously prejudiced, because we accepted the interpretations of this Government that they were in control and authority. We feel that as this Government has the authority they should maintain the authority—until there is a much more clear answer than Mr. Fortier suggested, until at some point regulations will be devised which will be peculiar to this particular type of vehicle.

I would submit that this leaves us in a very anomalous position at the present time—in not knowing what regulations to comply with. We have in fact followed all the regulations given to us up to now.

**The Chairman:** Mr. Nelligan, just on that point, you said "this Government". Do you question the authority of the federal Government and suggest that in some way these matters should be under provincial jurisdiction?

**Mr. Nelligan:** Not at all. We say we have accepted the authority of the federal Government, and because we have accepted it we have gone to considerable expense to conform to the regulations; and, just as we go into business, almost at the same moment as we go into business, we find this Government abrogating its control and authority and abandoning it to the provincial authority. This leaves us in a commercial dilemma right now; we do not know where we stand. This perhaps is more a personal problem to us, and honourable senators have to deal with a question of principle. However, in the interests of developing this industry, perhaps it might be wiser not to make such a change until there is some experience upon which this house can formulate a wise policy. We would suggest, with respect, that since this hovercraft has only now started, this aspect of the bill should be deferred until there is some experience upon which they can base a sound and wise policy. In the meantime we should be at least given credit for having complied with the regulations and be permitted to carry on, at least for a limited period of time.

I would point out one other difficulty, which may not concern honourable senators. We understand that there are other branches of the Government which are interested now in using hovercraft, and they are requiring that only licensed vehicles may apply. No one has licences at the moment, because this bill is now sort of suspended and we cannot get licences. We are certainly not going to be given a provincial ferry licence to do the work now in the Northwest Territories, and yet no one else knows who should be the licensing authority. This puts us in a very serious quandary. If the Aeronautics Act were left as the supervising authority for a period of time, this is what we are suggesting. Then we all could benefit from the developing technology of this art and formulate a much wiser policy than I suggest can be devised at this particular moment. I do not think I can put it any better than that at the moment.

**The Chairman:** Has any province legislated, Mr. Nelligan, in regard to these vehicles?

**Mr. Nelligan:** Not to my knowledge, sir. The whole question is that they will simply consider we are a ferry and we will have to have the same number of anchors as every ferry and the same number of deckhands and follow the other regulations—which we think will not solve problems for the time being.

**Senator Langlois:** To my mind it is not a question of a province having legislated or not in this field: it is a question of the federal Government having jurisdiction. There is nothing we can do about it.

**The Chairman:** I was wondering if any provinces had claimed jurisdiction in this matter.

**Mr. Nelligan:** I think there is no doubt at the moment that this Government has jurisdiction.

**The Chairman:** You agree the federal Government has jurisdiction in this field exclusively?

**Mr. Nelligan:** Exclusively, yes. But by putting it in the Canada Shipping Act it would be abandoning jurisdiction to the extent that they were engaging in traffic between inter-provincial points. That is the only distinction. As long as it remains under the Aeronautics Act, this problem does not arise.

**The Chairman:** We might ask Mr. Fortier whether "air cushion vehicle" is defined in the Aeronautics Act?

**Mr. Fortier:** Yes. Under the recent amendments to the Aeronautics Act, the definition of aircraft was revised to read as follows:

"aircraft" means any machine used or designed for navigation of the air, but does not include a machine designed to derive support in the atmosphere from reactions against the earth's surface of air expelled from the machine.

That is the definition which excludes hovercraft.

**Mr. Hopkins:** That is now law, is it not?

**Mr. Fortier:** It has not been proclaimed yet, but Bill S-14 has received Royal Assent.

**Mr. Hopkins:** It has not been proclaimed yet?

**Mr. Fortier:** It has not been proclaimed.

**Mr. Nelligan:** In our view, if I may point out with respect, that definition will also

include every helicopter which is within a certain number of feet off the ground. I do not think that it was intended to exclude helicopters, but that is one of the problems of definitions.

**Mr. R. R. MacGillivray, Director, Marine Regulations Branch, Department of Transport:** I think so. The air is not expelled from the machine.

**Mr. Nelligan:** I hope we never get to court on it.

**The Chairman:** Do you have anything more to say on Mr. Nelligan's submission, Mr. Fortier?

**Mr. Fortier:** Mr. Chairman and honourable senators, I would like to point out on the question raised by Mr. Nelligan, on the particular service which is now operated between Vancouver and Vancouver Island, that part of that service in Vancouver operates not only on water but on land. I would just like to state that the amendment in the Shipping Act would provide for control over these vehicles only when they are over water. The question as to what will happen when they are operated over land, as to whether the federal or the provincial authority will exercise jurisdiction, is now under study.

Mr. Chairman, on the other point, that of the licence that has already been granted by the Canadian Transport Commission to the company of Mr. Jones, I would like to point out that that application was made to the Canadian Transport Commission by Mr. Jones' company and also by another company, to operate a hovercraft service between Vancouver and Vancouver Island. The Commission held public hearings, a licence was granted to Mr. Jones' company and the other application was denied.

Following that, an appeal was taken by the other company whose application was denied, the appeal was made to the Minister of Transport under the provisions of the Aeronautics Act, an appeal from the decision.

In the judgment that was given by the minister, the Commission was ordered to give a licence also to the other company. Therefore, both companies are now licensed. That licence was given on the understanding and because these vehicles were being removed from the Aeronautics Act and brought under the Shipping Act.

**The Chairman:** Have you any objection, Mr. German, to the inclusion of these items in the Canada Shipping Act?



**Mr. Andrew Barry German, President, Hoverwork Canada Limited:** No, Mr. Chairman. In the statement that I made to the committee last week my intention was to put forward the idea that I agree in principle with the inclusion of air cushion vehicles under the Canada Shipping Act when, as stated in the proposed amendment, they are used in navigation.

I will be quite happy to say that I cannot anticipate, and have not had in the past, any difficulties in obtaining licences from, at that time, the appropriate authority for operations in Montreal, although this did have its administrative problems I must agree, and for operations last year in the Northwest Territories, and, indeed, for operations of a completely different type of air cushion vehicle here in Ottawa on an overland range.

These licences are certainly available so long as appropriate authority has been satisfied that the equipment is appropriate to the task and that the qualifications of the personnel who are involved is appropriate and that one is operating a competent organization.

This has been dealt with on an *ad hoc* basis, to my experience, in a perfectly satisfactory fashion.

So far as the point raised by Mr. Fortier regarding a proposed change to section 712A, subparagraph (2) (a), my reaction is to agree with his proposed change. Vessels normally of a certain size carry a licensed engineer who in fact is not carried for the purpose of repairing the vessel but who does carry out that function. Air cushion vessels normally leave their engineer behind, and he is involved in technical work when the machine is not being used. I think it is reasonable to require these people to have a proper qualification, and it seems to me that the Governor in Council should be in a position to prescribe those regulations and to issue licences and revoke them as has been allowed for here.

**The Chairman:** Thank you. Are there any questions of Mr. German? If not, are you ready to proceed with the bill clause by clause?

**Senator Flynn:** Mr. Chairman, may I have clarified the question whether there is any legislation governing the hovercraft when it travels over land? I understand that the hovercraft was to come under the Canada Shipping Act when travelling over water, but

is there any legislation in respect to it when it travels over land?

**Mr. Fortier:** Senator, that question is now under study. I might say that under the British North America Act lines of communication within a province exclusively come under provincial jurisdiction. However, in the question of these hovercraft we understand that they will be widely used in the Northwest Territories and, of course, in the Northwest Territories the provinces do not come into the picture. So it may be that they would, when operated in that part of the country, come under federal jurisdiction. But I do not say that with any certainty because the matter is under study.

**Senator Flynn:** In short, there is no legislation at all, either provincial or federal, applicable to these vehicles when they travel over land, at least presently.

**Mr. Fortier:** No.

**Senator Flynn:** There is a problem of jurisdiction, as you suggested, but there is no legislation either federal or provincial which would apply to them.

**Mr. Fortier:** It is not, sir, that there is no legislation. It is a question as to whether the existing provincial jurisdiction in respect of lines of communication operating within a province will be applicable on the question of operation of hovercraft.

**Senator Flynn:** Do you know of any provincial legislation that deals with hovercraft?

**Mr. Fortier:** No, sir.

**The Chairman:** That was explained some time ago, Senator Flynn. No province is presumed to have jurisdiction and, consequently, no province has legislation.

**Senator Flynn:** There is a difference between jurisdiction and the existence of legislation. That is my point. I agree that there is a problem of jurisdiction, but I want to know if there is legislation.

**The Chairman:** No, there is none.

Are there any more comments with regard to section 1?

**Senator Kinley:** What is the speed of hovercraft? Is it about 60 miles an hour?

**The Chairman:** Yes, Mr. Nelligan says that is the speed.

**Senator Kinley:** Provincial control is very important at 60 miles an hour, because it would be for short distances only.

**The Chairman:** However, as we understand it, Senator Kinley, the provinces do not claim jurisdiction over these vehicles.

**Senator Kinley:** Well, the provinces are beginning to claim jurisdiction over considerable amounts of the ocean now, so they will be claiming that too, you know.

**The Chairman:** If they do, we will have to wait until that occurs, I suppose.

Now, does clause 1(1), (2) and (3), having to do with air cushion vehicles and load line regulations, pass?

**Hon. Senators:** Carried.

**The Chairman:** Clause 2?

**Hon. Senators:** Carried.

**The Chairman:** With respect to clauses 3 and 4, I understand that Mr. MacGillivray would like to make a statement in respect of an objection to those clauses presented by Mr. Cook on behalf of the Canadian Merchants Service Guild.

**Mr. MacGillivray:** Honourable Chairman and honorable senators, Mr. Cook, representing the Canadian Merchants Service Guild, which is an organization representing masters, mates and engineers on Canadian ships, objected to these clauses. He suggested that there is a shortage of jobs for ships' officers in Canada owing to the trend to larger ships. He also suggested that the result would be that people who are unemployable in the United States would be able to come across into Canada and take away jobs from Canadians.

At present there is no surplus of officers. Under the Canada Shipping Act, section 135, the minister is empowered to exempt a ship from the requirement to carry the full complement of certificated officers, if he deems it necessary, and, during the year 1968, he had to issue over 900 such exemptions because of shortages of qualified masters, mates and engineers. So that there is not really a present shortage of jobs for properly qualified officers. As to allowing American unemployables to come and take away jobs from Canadians, I think that the immigration procedures leading to landed immigrant status are such as to weed out the truly undesirables and, in any event, Canadian

shipowners are unlikely to trust expensive ships or their machinery to such undesirable personnel.

The fact is that at the moment under the Act any British subject can hold certificates and act on Canadian ships. However, we have immigrants from Norway, West Germany and France and other places who are well qualified in their own countries and who would like to sit the examinations in Canada, prove their qualifications here and follow their chosen calling, and we think it is desirable that this amendment remain in effect.

**Senator Kinley:** What is the law of the United States?

**Mr. MacGillivray:** There presumably it is restricted.

**Senator Kinley:** It is. They have to be full-grown American subjects. That is all the union is asking here.

**Mr. MacGillivray:** Yes.

**Senator Kinley:** Don't you think it is reasonable?

**Mr. MacGillivray:** No, I do not think it is because in many other instances the immigrant who comes to Canada and is well qualified in a trade is allowed to practice that trade.

**Senator Kinley:** Can he practice medicine?

**Mr. MacGillivray:** No.

**Senator Kinley:** Or law?

**Mr. MacGillivray:** No.

**Senator Kinley:** He can be a mechanic if he has a mechanic's qualifications.

**Mr. MacGillivray:** That is true.

**Senator Kinley:** We have no merchant marine and anything that Nova Scotia wishes to do must be connected with the ocean. We have many unemployed there. Now we have technical schools and education and you are paying good money for that. Therefore I think we should preserve the jobs for our own people. You know they do not pay the wages in other countries that are paid in Canada and so people are attracted here because of that abnormal situation.

**Mr. MacGillivray:** But they come here as immigrants.



**Senator Kinley:** After they have been here five years they are citizens and they can have equal opportunity. But we should not compete against the world in this. We do not do so in anything else. I am an employer of labour and I am not a labour union man as a rule but I think they have a just cause here.

**Senator Langlois:** Mr. Chairman, may I ask a question of Mr. MacGillivray? He mentioned 900 applications in the course of last year. I should preface my question by saying that these applications for exemption are given for periods shorter than one year; they are given on the basis of a three-month exemption. Now when you speak of 900 applications, Mr. MacGillivray, do you mean there were 900 different applications, or were some of these repetitions?

**Mr. MacGillivray:** I should have pointed out that there were a certain number of repetitions. They are not all issued for the period of a whole year. Some are issued for a limited period. The actual figure was 990 applications but that does not mean that there were 990 people at any one time.

**Senator Langlois:** Is it not also a fact that most of these applications come from the province of Newfoundland, or at least a good part of them?

**Mr. MacGillivray:** I could not answer that. I would say a substantial proportion. I think most come from the east coast and the St. Lawrence.

**Senator Robichaud:** They had a few from St. John.

**Senator Kinley:** It is quite a field for recruitment. I am not sure about the higher positions, but the young fellows who learn come there after a while.

**Mr. MacGillivray:** As Mr. Cook pointed out there is a strong campaign on to improve the education of seamen. There is a very good fisheries college in Newfoundland at which they teach navigation and engineering, and there are others in the other provinces. They are run by the provinces because being a matter of education they come within provincial rights, but they are subsidized and assisted to a certain extent by the department, and we are doing our best to bring up the standards so that young men will be able to qualify.

**Senator Kinley:** We accept the British certificate do we not?

**Mr. MacGillivray:** Yes.

**Senator Kinley:** And any other countries?

**Senator Langlois:** And Ireland?

**Mr. MacGillivray:** Yes...

**Senator Kinley:** I am sorry, I didn't hear what you said.

**Mr. MacGillivray:** Other countries in the Commonwealth and the Republic of Ireland.

**Senator Langlois:** That was the result of a recent amendment to the Canada Shipping Act?

**Mr. MacGillivray:** An amendment of a few years ago.

**The Chairman:** Any other questions in respect to this clause 3?

Are you ready for the questions? Shall clause 3 carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 4? Shall Clause 4 carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 5. Perhaps Mr. MacGillivray might say just a few words of explanation for the sake of members of the committee who were not here on the last occasion. Perhaps he would tell us why these sections 238 to 243 and 270 to 275 are now being repealed.

**Mr. MacGillivray:** These sections are really archaic. They have been in the Canada Shipping Act and its predecessor legislation for many years with practically unchanged wording back into the days of sail. There are provisions for the protection of seamen against creditors and unscrupulous keepers of taverns and houses of public entertainment, lodging houses and bawdy houses and they provide a means for coercing such people into co-operating in the apprehension of deserters. They are really out of tune with the times. Perhaps in removing them from the act is in line with keeping the government out of the nation's bedrooms.

**The Chairman:** If any honourable senators read the small print on the following two or three pages they would understand why these are being repealed.

Shall clause 5 carry?

**Hon. Senators:** Carried.

**Senator Denis:** Why do we have two clauses to repeal these sections 238 to 243 and 270 to 275?

**The Chairman:** I suppose it is a matter of drafting.

**Mr. MacGillivray:** It is a matter of some of the niceties of drafting as practiced by the Department of Justice. In one clause they will deal with sections which fall in sequence.

**The Chairman:** Shall clauses 5 and 6 carry?

**Hon. Senators:** Carried.

**The Chairman:** Now we will deal with clause 7 on page 4. This relates to by-laws made under the Canada Shipping Act. Mr. MacGillivray, would you like to explain just briefly the meaning of clause 7?

**Mr. MacGillivray:** Yes, Mr. Chairman. The Royal Commission on Pilotage, in reporting in Part I of its report, declared that some of our pilotage by-laws are *ultra vires* and, therefore, are invalid. Almost simultaneously we have had one or two decisions in the courts declaring some of our by-laws to be invalid. Also, the report of the Royal Commission on Pilotage casts doubt on some of the other provisions.

We are not necessarily in agreement with their legal opinions on the point, but in order to remove all doubt we have suggested that this provision go in validating all existing by-laws, so that we may continue the administration of pilotage in the same manner as that in which it has been administered over the past many years.

**Senator Kinley:** This is not new, is it?

**Mr. MacGillivray:** We are not bringing in any new features.

**Senator Kinley:** Except the control by Governor in Council.

**Mr. MacGillivray:** No, the control has been exercised for many years.

**Senator Kinley:** I know.

**Mr. MacGillivray:** And what I say is that the royal commission has cast doubt on the validity of the by-laws made under that system.

**Senator Kinley:** We had a submission the other day, made by some gentleman representing a certain body, that it means that the

pilotage that he complains about is now controlled by Order in Council.

**Mr. MacGillivray:** The objection that was taken was taken by Captain Hurcomb, on behalf of the Dominion Marine Association, and his objection was that we have, in providing for a cut-off date for the validity of this section, set the cut-off date at 31st December, 1969, with provision for its extension by Order in Council by proclamation for a further year.

In the Department of Transport we are working on a study of the royal commission report. It must be recalled that Part I of that report runs to some 800 pages; that Part II has come out and it runs to some 500 or 600 pages; and that there are three more parts to come. So, this is an extensive study in order to determine what legislation can be proposed by the Government to institute a new regime in the field of pilotage. When we got the royal commission report and found that our bylaws were being attacked by the royal commission, we decided it was necessary to have something to perpetuate our system until such time as we can come up with new comprehensive legislation on pilotage, and in order to try to bring forward legislation that would not be contentious, we called a series of meetings of all organizations which would have an interest in the matter. This was the Shipping Federation of Canada, the Dominion Marine Association, the Federation of St. Lawrence River Pilots, and the National Association of Canadian Marine Pilots. We met with them and said we thought something had to be done, and we proposed that something of this sort would be done. We asked them whether they would support such legislation, and they said unanimously that they would support it, provided there was a cut-off date that would keep us under the gun on the matter of preparing the new legislation. The cut-off date that was suggested at those meetings by Captain Hurcomb was the end of this month, and as Senator Langlois mentioned at the first meeting here of this committee, and also Mr. Cook of the Guild, it was quite clear to the members present at that meeting, who know how difficult it is to rush legislation through, that a cut-off date at the end of this month was unrealistic. This was last October, and we were talking then and we suggested at the time that about 18 months was probably being optimistic. So, when the Government

decided on this section, it was the Government that decided that it would propose these cut-off dates.

**Senator Kinley:** His special request was that his captains and mates, who continually travel the St. Lawrence River and who are experts on pilotage there, should not have to hire special pilots to go up the river.

**Mr. MacGillivray:** Yes, and he pointed out that this was a fact recognized by the royal commission...

**Senator Kinley:** Yes.

**Mr. MacGillivray:** ... and so reported by the royal commission. I would anticipate that when the new legislation comes out there will be a provision in it that will satisfy Captain Hurcomb.

**Senator Kinley:** By Order in Council you can do that now, under this bill.

**Mr. MacGillivray:** No, this will simply validate a by-law about which there is some dispute which now imposes the requirement to pay compulsory pilotage of the Districts of Montreal and Quebec on these Great Lakes ships.

**Senator Pearson:** Would these mates and captains have to hire a pilot or be licensed as pilots themselves?

**Mr. MacGillivray:** There would have to be some method of giving them licenses or certificates to indicate they have the qualifications.

**The Chairman:** Captain Hurcomb, do you wish to be heard on this?

**Mr. P. R. Hurcomb, General Manager, Dominion Marine Association:** I would like to have a moment or two, unless Mr. Brisset would like to speak on this.

**The Chairman:** Mr. Brisset?

**Mr. Jean Brisset, Q.C., Counsel, Canadian Chamber of Shipping and the International Chamber of Shipping:** If I may be permitted, Mr. Chairman and honourable senators, the only issue in this case is the cut-off date. The associations I represent are quite in accord with the legislation intended to validate the by-laws, but the cut-off date has been the source of considerable discussion with the department. At a meeting on February 27 I tabled a letter which we addressed to the minister reminding him that the cut-off date

had been agreed at the 31st March, 1969. That was in August of last year. We had a reply from the minister—and, if I may be permitted, I would like to table it too—which acknowledges that date, and a copy of the proposal by the department in August of last year also, setting the date of March 31. Will I be permitted to do so?

**The Chairman:** Yes. Would you like to read them?

**Mr. Brisset:** Well, they are rather lengthy and simply refer to this single issue of March 31 as being the agreed date. All I will say is that we support the proposal made by Mr. Hurcomb, which your committee will find at page 75 of the report of the proceedings of February 27 last, when he agreed that the cut-off date could be extended, in view of the time that had elapsed, to December 31, but that any subsequent Order in Council further extending the deadline should be tabled before Parliament.

I wish to point out to this committee that the way the legislation reads now, section 27 would in practice push the date of the permanent legislation two and a half years away from the date of the issue of the first report of the commission, which I believe everybody agreed would be sufficient to prepare the general current legislation required. That is, two and a half years from July. I think July 11 was the date of the issue of the first report.

**The Chairman:** What year?

**Mr. Brisset:** 1968, and our meetings at which the date of March 31 was agreed were from August of last year.

**The Chairman:** If you have a letter we will print it as an appendix to the proceedings of today. Is that agreed? (*See Appendix "G"*)

**Senator Smith:** I should like to ask a question at this stage. I do not quite get the point you were making when you said recommendations had been made that such order in council should be passed and tabled in Parliament. What is the advantage of that over the usual procedure of the order in council appearing in an issue of the *Canada Gazette*?

**Mr. Brisset:** The purpose of this is that it would permit discussion of the whole situation. We feel that certainly this provision would perhaps help in having the department concerned prepare the required legislation within the time allowed, as otherwise explanations would have to be given to Parliament



showing why the legislation was not ready. It would relieve—here I speak, perhaps, for Captain Hurcomb—the members of his association from the agreement that they had made in respect to using restraint, particularly with respect to pilotage dues in those districts where dues were compulsory and where, if the report of the royal commission is to be accepted, the by-law making these dues compulsory is unlawful, and where the masters of these ships could travel without having a pilot and without having to pay the dues.

**The Chairman:** Mr. Brissett, may I ask you this question: Do you or do you not agree with the date used in the bill, and, if not, what alternative date do you suggest?

**Mr. Brissett:** I agree with the date of December 31, 1969, but suggest that the other part of the clause which permits an extension of a year be amended in line with the suggested wording of Captain Hurcomb, which the committee will find at page 75 of the transcript of the hearing of Thursday, February 27, and which I think he explained to you was patterned on the wording used in another act, the Maritime Transportation Unions Trustee Act.

So, there is a precedent for an order in council being tabled before Parliament in respect of this particular legislation.

**The Chairman:** Mr. Macgillivray, would you like to comment?

**Mr. MacGillivray:** Yes, Mr. Chairman. There is a suggestion that the Department of Transport made some agreement on this cut-off date, but it was made quite clear at the meeting—and I think Mr. Cook will bear me out in this; indeed, I believe he has said so—of this committee on February 27 last that the department explicitly stated it was not agreeing to anything; that it was not in a position to agree to anything binding the Government.

We have called this meeting for the purpose of trying to present to Parliament legislation that would not be contentious. It was agreed by all at the meeting that such legislation was necessary. We tried then to get agreement between the four parties, the two pilot organizations and the two organizations representing the users of the service, on what sort of legislation they would support. We felt that there was a certain amount of give and take between the organizations. We felt that it was in the interests of both the pilot organ-

izations and the user organizations—those who have a need for the service—that the present system of operating pilotage should continue in force.

There is nothing for the department to gain in keeping it in force. It would not hurt the department one bit to accept the rulings of the royal commission to the effect that we are not, for instance, allowed to operate the despatch system that we operate; that we are not allowed to do a number of things that we are doing. However, it is in the interests of the pilots and of the users of the service that there continue to be a service organized in such a way until such time as we can come up with the legislation.

Now, Captain Hurcomb made the point two weeks ago at the meeting of this committee that he was concerned that the department, with the passage of this clause, would set back and not press on with plans for new legislation. He said some people want the situation to remain as it is, and that nothing has happened so far. In point of fact, no one is more anxious than we in the department to see the appropriate legislation drafted and put into effect. I cannot think of anyone who wants to retain the present system indefinitely—the pilots don't, the users don't, and we don't.

I think it is rather silly to say that nothing has been done, because a task force has been organized in the department. Three people were detached from other work and put on to this work, and this caught us at a time when there was a freeze on appointment to the civil service. We had to detach people from other work and put them on to this. These three working full time, along with half a dozen others working part time, are engaged in a study of the report, and are proposing to come forward with papers on which the Government can make its policy decision.

**The Chairman:** Would you say there was a reasonable consensus amongst the interested parties in regard to the text of the legislation that you have in this section?

**Mr. MacGillivray:** With the exception of the expiry date, yes, I think there was reasonable consensus, but the expiry date that Captain Hurcomb suggested at the end of this month was quite impractical. The expiry date of December 31 is going to be very difficult to meet because the fitting of a new bill into the legislative calendar is going to be very difficult. Nevertheless, we are confident that we will be in a position before the end of the



year to make recommendations to the Government on the content of the bill, and we would hope that it will be up possibly before December 31, and certainly early in the new year. If not...

**The Chairman:** You have no other recommendations to make now as a result of the remarks that have just been made as to changing the section?

**Mr. MacGillivray:** No. We would like to see the clause remain precisely as it is, and we can see no advantage in calling for a debate in Parliament. As soon as we were sure that we were not going to meet the December 31 deadline, we would then have to stop work on drafting the new legislation in order to prepare the arguments for the Government to use in Parliament in the debate on this proposed tabled order in council.

**The Chairman:** Is the committee ready for the question in regard to the...

**Senator Flynn:** I just want to point out that Mr. Brisset, in fact, is in agreement with the clause. The only thing he wants is an order in council extending the time up to December, 1970 to be tabled in Parliament. I do not see what advantage this would give the people he represents, because anybody can put a question, even if the order in council is not tabled. A debate on this question could be provoked on the Estimates, and there are other devices. The mere fact of tabling an order in council does not create a debate in Parliament, and I do not see we would render any service to Mr. Brisset's clients in accepting this suggestion.

**The Chairman:** Are you ready for the question?

**Senator Smith:** Mr. Chairman, one of the witnesses was rising to speak.

**Mr. Hurcomb:** I was very diffident to rise and ask to be heard here, but I do think you issued an invitation and I would like to spend a few moments on this.

**The Chairman:** I would invite anybody who wishes to be heard again on this section to come forward.

**Mr. Hurcomb:** I will be three minutes at the most.

I represent Dominion Marine Association, the Canadian registry inland shipping people. I want to speak to the point Mr. Brisset mentioned this morning, which we are now dis-

cussing. I agree in all respects with what Mr. Brisset has said. Just to give balance to the situation, I would point out that at the meeting of July 17 called by Mr. Baldwin, then Deputy Minister of Transport, the department in effect were coming to us hat in hand. This, of course, is my version of it. They were in difficulties. The royal commission had called in question the legality of many of the things they had been doing and many of their bylaws. In effect, the department asked the users, namely the shipping companies and the pilots, to co-operate with them in getting out of this awkward dilemma. They asked us to be restrained in exercising our legal rights until such time as the department would be able to prepare the new legislation. That meeting was on July 17, 1968. On September 6, 1968, I wrote a letter to Mr. Baldwin which clearly sets out our position. I said:

I think it would be useful to review the position taken on behalf of Dominion Marine Association from the outset and maintained consistently since then. It appears to be more or less generally agreed that the By-laws making the payment of pilotage dues compulsory within the pilotage districts of Montreal and Quebec are illegal. Our members are therefore at the present time in a position from the legal standpoint to refrain from paying pilotage dues in respect of those districts. However, we recognized that insistence on legal rights by ourselves, or by the pilots, or by other shipping organizations, and the consequent altering of the practices that had been followed for some years would seriously and perhaps dangerously disrupt the system of navigation in the St. Lawrence River. Accordingly we, with the other interested parties, agreed to persuade our members to exercise restraint in asserting their full legal rights at this time.

Our agreement was from the beginning, still is, and will remain conditional on the Government proceeding at the earliest practicable moment with the drafting and introduction of new legislation to implement in general the recommendations of the Royal Commission on Pilotage. Looking at all the circumstances and with full awareness of the problems that are encountered in the preparation of new legislation, we felt that a deadline of March 31, 1969 for the introduction of the new legislation in Parliament would be quite practical.

It was for this reason that we have insisted that the remedial legislation to validate existing by-laws would expire on March 31, 1969. It could be extended beyond that date only after an elaborate procedure which would put the Department and the Government in the position of having to explain to Parliament why it did not prove possible to introduce the new legislation by that date.

I will not quote the rest of that because it refers to Mr. Brisset's suggestion, the device for tabling. I went on:

I cannot emphasize too strongly our insistence upon a procedure along the above lines. It has not been easy to persuade our members to exercise restraint in a matter involving many thousands of dollars spent, in most cases, fruitlessly and needlessly. Their restraint and our co-operation with your Department depend entirely upon your implementing the above undertakings.

That put our position on September 6. On November 8 we followed up with another letter dealing with the same question. We referred the department back to the letter I have just read and stated it was our policy. This is a bilateral arrangement between the department and ourselves. We helped them, at some expense to ourselves, but we did it conditionally. They have not met that condition. They have, as we feared they would—

**Senator Burchill:** Was there any reply to your communication?

**Mr. Hurcomb:** There was no specific reply to that letter, sir. The letter of November 6 to which I have just referred mentioned certain aspects of the commission's report, and in the last paragraph I said:

May we emphasize again the points raised in our letter to you of September 6 that is the one I have just read—

particularly the need for expedition in the provision of the new legislation. As we stated in that letter, the restraint of our members and our continued co-operation with your department in this matter depend entirely upon your adherence to the guidelines agreed to during recent meetings, and described in great detail in my letter to you of September 6, a copy of which is enclosed.

If they did not get the letter on the first occasion they got it this time, because I have

an acknowledgement from Mr. Gordon Stead of November 15 acknowledging that letter. It is not specifically on this point, but it is an acknowledgement of the letter.

That is our position, and we are serious about it.

**The Chairman:** Are there any questions? If those are all the submissions, I would just like to say to you, Mr. Hurcomb, that naturally the position of this committee is not exactly easy in respect to the representations now made by you and Mr. Brisset. On the other hand, I think you will understand that in important legislation of this kind the committee might not be very desirous of acceding to your wishes without calling upon the minister and having him speak to the committee.

**Senator Flynn:** It is a useless remedy anyway. It would be different if they were proposing something practical, but this does not give them anything. They have only proposed that the orders in council be placed before Parliament. It does not change the situation whether they are placed before Parliament or not.

**Mr. Hurcomb:** With great respect, sir, may I just add a word on that? The order in council, as Senator Flynn is aware, could be passed without anyone knowing anything about it and could be effective.

**Senator Langlois:** What about the *Canada Gazette*? It will be published in the *Canada Gazette*.

**Mr. Hurcomb:** *Ex post facto*.

**Senator Langlois:** How can it be published without anybody knowing about it?

**Mr. Hurcomb:** Until after the passage I mean.

**Senator Flynn:** Oh, I see. You have added this.

**Mr. Hurcomb:** Yes, sir.

**Senator Flynn:** It is not only tabling, but you want to provide for a debate within a given period.

**Mr. MacGillivray:** Exactly, sir. On page 76. I think Senator Flynn will agree that this does give some added protection or force to the condition.

**The Chairman:** Thank you.

Is the committee prepared to deal with the sections? Clause 7, subclause (1)—that was in

regard to the report of the Royal Commission on Pilotage. Agreed, honourable senators?

**Hon. Senators :** Agreed.

**The Chairman:** Subclause (2), licences to pilots and apprentices. Agreed? That is on page 5.

**Hon. Senators:** Agreed.

**The Chairman:** Subclause (3). That is the controversial section we have been discussing. May I have a motion either to accept or reject it?

**Hon. Senators:** Carried.

**The Chairman:** Sub (4)?

**Hon. Senators:** Carried.

**Senator Burchill:** Pardon me, but I would like to clarify a point. In regard to the pilotage dues on the St. Lawrence and this area, as the situation is at the present time, can they be questioned legally? Can they evade?

**Mr. MacGillivray:** This is a matter, senator, of opinion. I may say that some years ago this department did bring forward an amendment to the Canada Shipping Act. Some people in the department were of the same opinion as the Royal Commission and Captain Hurcomb that there was not a legal basis for the by-law making pilotage costs compulsory in those two districts. When the matter was debated in this committee it accepted another opinion, the opinion that the by-laws already were valid and rejected our amendment. This is seven or eight years ago.

**Senator Burchill:** It is a question of law.

**Mr. MacGillivray:** So there is room for opinion on the part made by Captain Hurcomb?

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Page 6, clause 8.

**Hon. Senators:** Agreed.

**The Chairman:** Clause 9 on the same page.

**Hon. Senators:** Agreed.

**The Chairman:** On clause 10 there has been no controversy, honourable senators.

**Hon. Senators:** Carried.

**The Chairman:** Clause 11.

**Hon. Senators:** Carried.

**The Chairman:** Clause 12?

**Hon. Senators:** Carried.

**The Chairman:** Clause 13?

**Hon. Senators:** Carried.

**The Chairman:** Clause 14?

**Hon. Senators:** Carried.

**The Chairman:** Clause 15?

**Hon. Senators:** Carried.

**The Chairman:** Clause 16?

**Hon. Senators:** Carried.

**The Chairman:** Clause 17?

**Hon. Senators:** Carried.

**The Chairman:** Clause 18?

**Hon. Senators:** Carried.

**The Chairman:** Clause 19?

**Hon. Senators:** Carried.

**Senator Pearson:** Why were those sections repealed?

**The Chairman:** Senator Pearson has a question in regard to the repeal of these sections in 18 and 19.

**Mr. MacGillivray:** Clause 18 provides for the repeal of section 472 and that is consequential on the previous clause 17. Clause 17 provides for making regulations in respect of safe working conditions aboard ships and so this is simply consequential on that.

**The Chairman:** Thank you. What about the repeal of section 477 and section 478?

**Mr. MacGillivray:** The repeal of those two is consequential on the provisions of clause 9 which you have approved. Clause 9 provides for the making of regulations respecting vessels that are not self-propelled. For some reason the act contained these two sections dealing with this, whereas if they were self-propelled vessels they came under regulations which were made. This is consequential on clause 9.

**The Chairman:** Agreed?

**Hon. Senators:** Agreed.

**The Chairman:** Clause 20. Is there any explanation you are required to make on that, Mr. MacGillivray?

**Mr. MacGillivray:** At the present time this is the inspection requirement under the act



and extends only to vessels of 15 gross tons and over. Because of response to considerable pressure, particularly by unions on the west coast, we have decided that we would have to undertake some inspection of vessels below that tonnage. We have decided that it would be possible for us to carry out the inspection of vessels between nine and 15 tons. This provision will allow for regulations to be made respecting the extent of inspection made to such vessels. The principal effect will be on tug boats on the west coast of Canada.

**The Chairman:** Agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Smith:** Mr. MacGillivray, does this change with regard to subclause (3) have an effect on the operations of fishing vessels on the east coast?

**Mr. MacGillivray:** Yes, it does bring in fishing vessels of that sort.

**Senator Smith:** There have been some exceptions in the past in relation to fishing vessels. I am wondering what effect this has on the industry.

**Mr. MacGillivray:** It will mean that the inspection of fishing vessels, up until now, has been only carried out where there were vessels of 15 tons or over. The small fishing vessel inspection regulations will be amended as the result of this to include vessels of nine tons and over. It continues to be our intention to treat fishing vessels in a category by themselves as we always have done.

**Senator Smith:** You mean that you would draw up regulations in such a way that there would be discretion as to the kind of inspection procedures and the time of them and so on?

**Mr. MacGillivray:** Yes.

**Senator Smith:** Before those are drawn up is it the usual practice to have consultation with the industry?

**Mr. MacGillivray:** Our invariable practice is to circulate draft regulations for discussion with the industry. We have a very lengthy mailing list.

**Senator Smith:** Yes, I hope you do.

**Senator Kinley:** Nine tons is just a small boat.

**Mr. MacGillivray:** As I say, it is going to be done by regulation and the place where it has been found really necessary is in the tug boat field, which is principally on the west coast and where you do have vessels now being built to 14.9 tonnage so as to avoid inspection. But they are very powerful tugs.

**Senator Kinley:** The Cape Island boat would be about that size, but not quite as big.

**Mr. MacGillivray:** The usual Cape Island boat would be a little smaller.

**Senator Smith:** I wonder if the witness would give us information as to what length of boat on an average is related to nine tons.

**Mr. MacGillivray:** In the fishing vessel category, probably between 35 and 40 feet in length.

**Senator Smith:** These are not small boats, then, and whether or not this may be a change which may mean trouble for some of us later on will depend on the enforcement and the regulations.

**Mr. MacGillivray:** That is right, senator.

**The Chairman:** Shall clause 20 carry?

**Hon. Senators:** Carried.

**The Chairman:** On Clause 21—this involves the repeal of a section and also an amendment. Would you like to say something Mr. MacGillivray?

**Mr. MacGillivray:** This is an amendment that has become rather routine in nature, as we go through these bills.

The present section 493 provides a penalty of \$100. The standard punishment which the Justice Department likes to see, in clauses of this sort, is a penalty of \$500 or six months' imprisonment, which is the penalty in the Criminal Code for summary conviction of an offence. The penalty of \$100 was probably set a hundred years ago.

**The Chairman:** Shall clause 21 carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 22 carry?

**Hon. Senators:** Carried.

**The Chairman:** Shall clause 23 carry?

**Senator Kinley:** On this question of garbage and sewage what is the law now, exactly?



**Mr. MacGillivray:** The provisions of section 495A of the act would allow the Governor in Council to make regulations respecting pollution of the sea and all Canadian waters by oil from ships.

**Senator Kinley:** We have an international agreement—what is it, is it 50 miles or 100 miles?

**Mr. MacGillivray:** At the present time the prohibited zone off the east coast of Canada is 100 miles.

**The Chairman:** Shall clause 23 carry?

**Hon. Senators:** Carried.

**The Chairman:** On clause 24.

**Senator Langlois:** Mr. Chairman, I wish to move the following amendment:

That page 15, clause 24 of Bill S-23, an act to amend the Canada Shipping Act, be amended by striking out lines 17 to 41, both inclusive.

This refers to the whole of the wording of the proposed new section 495D on page 15.

**Senator Flynn:** Section 495C would remain the same?

**Senator Langlois:** Yes.

**The Chairman:** I thought we should deal first with section 495C. Mr. Fortier, have you anything to say in regard to it?

**Mr. Fortier:** No.

**The Chairman:** As I understand, there is no controversy in regard to that section, is that agreed?

**Mr. Brisset:** Mr. Chairman, we had suggested an amendment to this section, the text of which will be found in the transcript of the proceedings of this committee of February 27, at page 65, at the top of the page. This amendment, if I may be permitted to read it, was as follows:

(1) Where the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned

(a) is polluting or is likely to pollute any Canadian waters,

(b) constitutes or is likely to constitute a danger to waterfowl or marine life, or,

(c) is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

the owner of such vessel shall immediately take all the reasonable and appropriate measures to mitigate such pollution, damage or danger, and in default of his so doing, the Minister may take such measures and if necessary may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct.

I explained at the time the reasons for this.

**The Chairman:** I take it, Mr. Brisset, that the main effect of the amendment is to give the owner an opportunity first to remove the polluting vessel and only in default of such being done that the minister has the right to step in?

**Mr. Brisset:** That is so.

**Senator Aseltine:** Could he not have that done, anyway?

**The Chairman:** No. We might discuss that.

**Senator Langlois:** It has been the practice.

**Mr. Brisset:** This was intended also in connection with a scheme which I described before your committee, TOVALOP, which permits the owner to do the necessary work to prevent pollution or to clean up beaches, even where he is not liable for the action which caused this, and then recover from the indemnity association to which he will belong. I have given an outline of the whole scheme which was introduced by some of the major oil companies in the world.

**Senator Kinley:** Did you say anything insurance rates on this kind of risk, that it would be not insurable, that the rate was too high?

**Senator Langlois:** That is under another section.

**Mr. Brisset:** The uninsurable action is in connection with the following section, 495D, which is covered in the TOVALOP scheme and is up to a limit of \$10 million. This is a voluntary scheme to repay expenses incurred by national governments all over the world in case they have to do a job of cleaning up or preventing pollution.

**The Chairman:** Thank you, Mr. Brisset.

I would like to call on Mr. MacGillivray or Mr. Fortier to express the attitude of the minister to this; but first, Senator Langlois, did you have some comment you wanted to make?

**Senator Langlois:** I wanted to draw the attention of the committee to a statement the other day by Mr. MacGillivray, when he said that even though we had similar provision under the Navigable Waters Protection Act, that it has been the practice of the department always to notify the owners and give them an opportunity to go to the wreck and take measures to remove it; and he indicated, if I understood him correctly, that this would be the practice under this new legislation—that the owner would be given an opportunity to take the necessary steps to remove the wreck.

**Senator Flynn:** Therefore, in principle the amendment is correct.

**Senator Langlois:** I am not prepared to say that, Senator Flynn, because here we are dealing with a danger, a grave danger, and if the owner does not take immediate action the damage might be quite extensive.

**Senator Flynn:** But the minister may then act, if the owner does not do what he should do.

**Senator Langlois:** The proposed amendment by Mr. Brisset is referring to “any reasonable steps”. What is meant by “reasonable steps”?

**Senator Flynn:** They must be efficient, I suppose.

**Senator Langlois:** One thing we have to bear in mind is that this organization TOVALOP is in the City of London, England.

**Senator Flynn:** I am not referring to that.

**Senator Langlois:** Mr. Brisset is basing an amendment on this.

**Senator Flynn:** There is no mention of this organization in the amendment.

**Senator Langlois:** I know that. It is quite evident.

**Senator Flynn:** Normally, the principle embodied in the amendment suggested by Mr. Brisset would be acceptable, and I do not see why the department is not willing to accept it.

**Senator Langlois:** It is because, as I said, the department will have to act in a hurry.

**Senator Flynn:** Well, yes.

**Senator Langlois:** And the slightest delay might increase the damages tremendously.

**Senator Flynn:** If you say that in practice they will give the opportunity...

**Senator Langlois:** But the amendment goes farther than that. The minister would have to wait until the owners had taken reasonable steps.

**Senator Flynn:** You suggest that in some cases the minister may not give the opportunity to the owners?

**Senator Langlois:** Who is going to interpret what is meant by “reasonable steps or measures”?

**Senator Pearson:** Would it not be better to put in a time limit?

**Senator Langlois:** Mr. Miller covered that point pretty well the other day.

**Mr. MacGillivray:** Mr. Chairman, I did mention this the last time I spoke on this in response to Mr. Brisset's suggestion for an amendment. As Senator Langlois has pointed out, I mentioned what is our practice. But I also mentioned that we feel that the Government has a responsibility in the public interest to make the judgment as to whether it is advisable to wait for the owner to act or not. It is a fact that in the case of the Torrey Canyon, which prompted this, the British Government did wait while the owners went aboard the ship with their salvage experts to see what they were going to do about saving the ship and its cargo and preventing pollution. This delay contributed considerably to the damage that was done while they gave the owner a fair opportunity to arrange salvage. The owner is going to be under a compulsion to try to save his ship, and he will be looking not only to preventing pollution, but also to saving his ship, and the Government is going to have to have the power in the public interest to step in, if it feels that the owner is devoting too much attention to saving the ship and not enough to avoiding pollution.

**Senator Burchill:** What has been the experience over the years?

**Mr. MacGillivray:** Fortunately, senator, we have had very little experience with wreck causing pollution. But our experience with wreck that is only a hazard to navigation has been that normally, when we give the owners a chance, they step in and effect the removal of the wreck. We are quite anxious that they should, because we are not anxious to spend money and then have to go to court to collect from the owner.

**Senator Kinley:** There was a rather bad wreck at the entrance to Halifax harbour. How did you get along with that one?

**Mr. MacGillivray:** With respect to that wreck, there was good co-operative effort by the owners and ourselves. We were also blessed by a change of wind that carried the oil out to sea. But there was full co-operation between the owners and us.

**Senator Kinley:** Was it a Canadian ship?

**Mr. MacGillivray:** No, it was not a Canadian ship, but the Canadian agents and their counsel in Halifax worked very closely with us.

**Senator Kinley:** And there was another wreck across the harbour.

**Mr. MacGillivray:** Yes.

**Senator Kinley:** And that one caused some trouble.

**The Chairman:** Thank you. Are there any further comments?

**Senator Flynn:** I said that in principle I agree but I think in practice we need not worry.

**The Chairman:** Shall section 495c carry?

**Hon. Senators:** Carried.

**The Chairman:** Honourable senators, we come now to section 495d on page 15. Senator Langlois some time ago, seconded by Senator Kinley, moved the following amendment:

That page 15, clause 24 of Bill S-23, an Act to amend the Canada Shipping Act, be amended by striking out lines 17 to 41, both inclusive.

The effect of that amendment is to completely delete section 495d.

**Senator Flynn:** And replace it?

**The Chairman:** No. Just remove it from the bill. I might add that this was the controversial section which was objected to by the people from Montreal and by Mr. Miller from England.

**Senator Langlois:** This amendment goes a long way towards meeting the objections which were made before this committee. It goes almost the whole way.

**The Chairman:** Are you ready for the question? All in favour?

**Hon. Senators:** Carried.

**Mr. MacGillivray:** I would like to have added in connection with that, Mr. Chairman, that while this amendment has been proposed and passed now, the minister was not prepared to suggest or propose such an amendment. And I was under instructions not to raise any objection to it but to point out that in this connection we consider this as merely a deferment of the provision and not its final rejection.

**The Chairman:** We come now to page 16, clause 25.

**Hon. Senators:** Carried.

**The Chairman:** Clause 26.

**Hon. Senators:** Carried.

**The Chairman:** With respect to clause 27 there is an amendment which Senator Langlois would like to move.

**Senator Langlois:** I wish to make the following motion:

That Bill S-23, An Act to amend the Canada Shipping Act, be amended by striking out paragraph (a) of subsection (2) of section 712A on page 17 thereof and substituting the following:

'(a) providing for the licensing of persons acting as members of the crew or employed in connection with the maintenance and repair of air cushion vehicles used in navigation, and for the suspension and revocation of such licences;'

**The Chairman:** Honourable senators, the only change appearing in that is with respect to the provision for suspension and revocation of such licences, as well as, as Mr. Fortier points out, providing for the licensing of the persons referred to in the subsection. Does this clause carry?

**Hon. Senators:** Carried.

**The Chairman:** Clause 28?

**Hon. Senators:** Carried.

**The Chairman:** The title and preamble?

**Hon. Senators:** Carried.

**The Chairman:** The bill is reported subject to the amendments that have been made to it. Honourable senators, this terminates this part of today's meeting. Thank you very much.

The committee adjourned.



## APPENDIX G.

Documents tabled by

Jean Brisset, Q.C.

## THE MINISTER OF TRANSPORT

February 25, 1969.

H. Colley, Esq.,  
President,  
The Shipping Federation  
of Canada, Inc.,  
326 Board of Trade Building,  
Montreal 125, P. Q.

Dear Mr. Colley:

Thank you for your letter of 20 February advising me that you propose to appear before the Senate Committee on Transport and Communications and raise objections in connection with Clause 7 of Bill S-23, an Act to Amend the Canada Shipping Act.

As you have noted, this Clause was inserted into the Bill in order to permit the continued operation of pilotage services under the rules that have been applied heretofore by the various Pilotage Authorities. It is intended as an interim measure only and will be replaced by comprehensive new legislation when the Government has had an opportunity to give full consideration to the Report of the Royal Commission on Pilotage.

I understand that the matter of a termination date for this interim legislation was discussed at three different meetings between officials of the Department and representatives of The Shipping Federation of Canada and other interested organizations.

I had been informed at the time that these organizations only undertook to support the legislation on the conditions mentioned in your letter. However, the Government considered that a termination date of March 31, 1969, with provision for extension for one year, was not a reasonable target in view of the complexity of the subject and the many substantial changes in the present system that must be considered.

I fully share your feelings about the desirability of proceeding as quickly as possible toward complete revision of our pilotage laws and I wish to assure you that we are proceeding as quickly as we can to deal with the matter.

Yours sincerely,  
Paul T. Hellyer.

THE SHIPPING FEDERATION  
OF CANADA  
INCORPORATED

326 BOARD OF TRADE BUILDING

COPY

File: LS.17—11E

MONTREAL 125

March 4, 1969.

The Honourable Paul T. Hellyer, B.A.,  
Minister of Transport,  
Department of Transport,  
Hunter Building,  
Ottawa, Ont.

*Re: Bill S-23—Clause 7—Pilotage*

Honourable Sir:

I am taking the liberty of acknowledging your letter of February 25th to our President, Mr. Colley, as he is presently abroad.

Although our members were in accord that an interim legislative measure was required to permit the continued operation of pilotage services and undertook to exercise restraint until the general recommendations of the Pilotage Commission could be implemented by appropriate legislation, they had only agreed to do so until March 31, 1969, a date which they were led to believe would appear in the text of the proposed interim legislation, as you will see from the document submitted by the Officers of your Department at the last meeting held in Montreal on August 30, 1968 with the representatives of all the interests concerned.

It was at this meeting that strong representations were made to have an Order-in-Council purporting to extend such termination date tabled before Parliament. It was; therefore, with considerable surprise and also shock for they had had no previous advice of this departure from the agreement, that our members found that Clause 7 of Bill S-23 set a termination date not of March 31, 1969 with provision for extension for one year, as you mention in your letter, but of December 31, 1969 with another year of extension, thus pushing the enactment of new pilotage legislation, which is so urgently needed, as far



ahead as two and a half years from the date of the release of the Commission's first report.

This report, it is generally felt, contains sufficient material to permit the enactment of the required legislation, a view which we have already expressed along with other shipping interests in a letter addressed to your Assistant Deputy Minister, Mr. Gordon W. Stead, on November 11, 1968, and a copy of which is also enclosed.

I am, Sir,

Yours respectfully,

Marcel Jetté,

EXECUTIVE DIRECTOR.

MJ:MT

Encs.

c.c. Canadian Chamber of Shipping

THE SHIPPING FEDERATION  
OF CANADA  
INCORPORATED

326 BOARD OF TRADE OF BUILDING

REGISTERED

File: LS.17—11E

Montreal 1  
November 11, 1968.

Gordon W. Stead, Esq.,  
Assistant Deputy Minister,  
Marine Services,  
Department of Transport,  
Hunter Building,  
Ottawa, Ont.

Dear Sir:

Re: Implementation of the Report of The  
Royal Commission on Pilotage

You have asked for the views of the Federation on the specific recommendations made by the Royal Commission on Pilotage and although we have at a recent meeting with Members of the Pilotage Task Force appointed by your Department, made it known that we were in general agreement with these recommendations, we would like to reiterate perhaps in a more formal manner the views which we have already expressed.

The general recommendations of the Royal Commission, which are intended to serve as a basis for the legislation which we hope will be introduced before Parliament with the least possible delay can, we consider, be

grouped under six (6) main headings, such recommendations foreseeing:

1. The necessity of an entirely new Pilotage legislation fully comprehensive and, therefore, such as to permit the organization and administration of Pilotage without reference to any other legislation;

2. The creation of a central Pilotage Authority to be a Crown agency or Corporation responsible to Parliament and having full jurisdiction to implement the proposed legislation with the Pilotage District to remain the unit of organization with as much autonomy as possible. It is, of course, the earnest hope of the shipping industry that when such a Corporation is established, the industry will be represented on its Board;

3. The imposition of compulsory Pilotage where required in the interests of safety of navigation but with personal exemptions to be granted to masters and mates whose competency is such as to permit them to dispense with the services of pilots; in imposing the compulsory system, the legislation should, of course, not depart from the intent of the International Conventions to which Canada has adhered;

4. Giving to the Pilots the status of Crown employees where Pilotage is compulsory because it is considered to be an essential public service;

5. Close supervision by the Pilotage Authority over the grouping of Pilots into Corporations with regard to each Pilotage District;

6. The adoption of all administrative measures necessary to ensure that at all times the competence, physical and mental fitness and reliability of Pilots to perform their duties be of the highest standard, such measures to include re-appraisal of Pilots, the re-appraisal procedure to take into account all technological developments with which Pilots should be familiar.

With these principles, the Federation is in full accord. Even though Parts II to V of the Royal Commission's Report may not be available for some time, it is felt that on the basis of the general recommendations of the Commission contained in Part I, the required legislation can be drafted, whereas the By-laws applicable in each of the Districts eventually formed could be delayed until the

Commission's Report on them is published, since under the general pilotage legislation the task of drafting such By-laws will be left to the local Authority.

It has been suggested that the Departmental Task Force should prepare a statement of at least the principles which in their view should be expressed in the new legislation for submission to the interested parties for their comments before it goes to the Cabinet. With this suggestion, the Federation is in complete agreement, and if the Department does not meet opposition from the interested parties to such principles, then the drafting and eventual steering of the legislation through Parliament should be greatly facilitated.

Yours very truly,

THE SHIPPING FEDERATION OF CANADA

H. Colley,  
PRESIDENT.

#### PROPOSED LEGISLATION (GENERAL) TO VALIDATE PILOTAGE BY-LAWS

The Department of Transport, with the assistance of the Department of Justice, is working on a draft text of legislation to give force and effect to and to validate the current Pilotage By-laws.

An attempt will be made to have the final text contain the most essential elements which were agreed upon at the August 7th meeting between the Department of Trans-

port, Dominion Marine Association, Canadian Chamber of Shipping, Federation of the St. Lawrence River Pilots, and others. The text will be subject to the usual elements of form and substance which are in accordance with Government policy.

The following points are presently being considered for inclusion into an amendment to the Canada Shipping Act for the purpose of validating the current Pilotage By-laws:

1. A general provision to the effect that By-laws purported to have been made under section 329 of the Canada Shipping Act will be deemed to have the same force and effect from the days they were confirmed by Order-in-Council as though the By-laws had regularly been made on such days and in accordance with an Act of Parliament authorizing such By-laws.

2. A provision to include a schedule in the amending Act, containing an enumeration of the various Orders in Council and By-laws.

3. A general provision to validate nominations, appointments, pilots' licences etc., until amended or rescinded in accordance with the provisions of the Canada Shipping Act or By-laws made thereunder.

4. All Orders-in-Council referred to in the Schedule (paragraph 2 above) will be repealed or revoked on March 31, 1969 or at a later date to be fixed at any time in a proclamation of the Governor-in-Council.



















First Session—Twenty-eighth Parliament  
1968-69

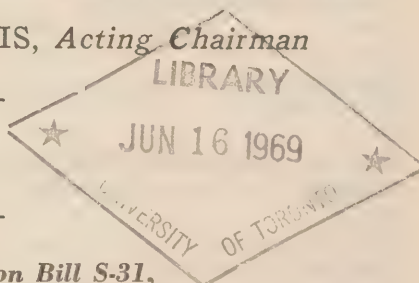
# THE SENATE OF CANADA

## PROCEEDINGS OF THE STANDING COMMITTEE ON

# TRANSPORT AND COMMUNICATIONS

The Honourable L. LANGLOIS, *Acting Chairman*

\_\_\_\_\_  
No. 9  
\_\_\_\_\_



*Complete Proceedings on Bill S-31,*

*intituled:*

*"An Act respecting Canadian Pacific Railway Company".*

\_\_\_\_\_  
WEDNESDAY, MAY 7th, 1969  
\_\_\_\_\_

### WITNESSES:

*Canadian Pacific Railway Company:* J. E. Paradis, Q.C., Senior Solicitor;  
J. Cherrington, Engineer, Special Projects, Pacific Region; R. S. Allison,  
Regional Manager, Operations and Maintenance, Pacific Region;  
and W. Miller, General Manager, Pricing.

*Fording Coal Limited:* R. M. Porter, President.

\_\_\_\_\_  
REPORT OF THE COMMITTEE

STANDING SENATE COMMITTEE ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, Chairman

The Honourable Senators

Aird,	Kinnear,
Aseltine,	Lang,
Beaubien ( <i>Provencher</i> ),	Leonard,
Bourget,	Macdonald ( <i>Cape Breton</i> ),
Burchill,	McDonald,
Connolly ( <i>Ottawa West</i> )	McElman,
Connolly ( <i>Halifax North</i> ),	McGrand,
Croll,	Méthot,
Davey,	Molson,
Desruisseaux,	Nichol,
Dessureault,	Paterson,
Farris,	Pearson,
Fournier ( <i>Madawaska-Restigouche</i> ),	Phillips ( <i>Prince</i> ),
Gélinas,	Quart,
Gouin,	Rattenbury,
Haig,	Roebuck,
Hayden,	Smith ( <i>Queens-Shelburne</i> ),
Hays,	Sparrow,
Hollett,	Thorvaldson,
Isnor,	Welch,
Kickham,	Willis.
Kinley,	

*Ex officio members:* Flynn and Martin.

## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Nichol moved, seconded by the Honourable Senator Prowse, that the Bill S-31, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

After debate, and

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Nichol moved, seconded by the Honourable Senator Prowse, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

"Extract from the Minutes of the Proceedings of the Senate of Canada, April 22nd, 1969:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Bourget, P.C.:

That the name of the Honourable Senator Nichol be substituted for that of the Honourable Senator Lefrançois on the list of Senators serving on the Senate Standing Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*





## MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day to consider Bill S-31, "An Act respecting Canadian Pacific Railway Company."

*Present:* The Honourable Senators Langlois (*Acting Chairman*), Connolly (*Halifax North*), Connolly (*Ottawa West*), Hollett, Isnor, Kinley, Molson, Pearson, Sparrow and Welch.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

*Canadian Pacific Railway Company:*

J. E. Paradis, Q.C., Senior Solicitor,

J. Cherrington, Engineer Special Projects, Pacific Region,

R. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region, and

W. Miller, General Manager, Pricing.

*Fording Coal Limited:* R. M. Porter, President.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 10:35 a.m., the committee adjourned to the call of the Chairman.

ATTEST:

Marcel Boudreault,  
*Clerk of the Committee.*

**Senator Pearson:** That means only one railroad would be running into Roberts Bank?

**Mr. Paradis:** That is right, sir, one rail line but there will be four railways cooperating and collaborating in this route: Canadian Pacific, Canadian National, Great Northern and the British Columbia Hydro and Power Authority.

At the present time British Columbia Hydro and Power Authority has a line of railway in southwestern British Columbia, but in order to create this rail route they had to secure authority to build three additional small pieces. In due course all four railways will be participating in this rail route.

**Senator Pearson:** You had to get permission from British Columbia or Hydro?

**Mr. Paradis:** B.C. Hydro had to secure that authority. It is not in the form of an Act of Parliament. An application was made to the Minister of Transport—really to the Cabinet—and a certificate was issued in November last authorizing the construction. You will note that the C.P.R. line—

**The Chairman:** You are using a larger chart now.

**Mr. Paradis:** There are two distinct maps, Mr. Chairman: One has to do with the Fording branch line, covered by clauses 1 and 2 of the bill; the second and larger map deals with clauses 3 and 4, namely, the rail route to Roberts Bank. We are now on the second map.

I might draw your attention to the scale at the bottom right-hand corner, which is ten miles to two-and-one-half inches. I say this because the line of railway shown in brown which starts at the very right hand-side of your map and goes into Mission is the C.P.R., but C.P.R.'s participation can be better explained by saying that the coal fields which this rail route will serve are some 650 to 670 miles east of that point. Canadian Pacific will be carrying the coal for the 650 or 670 miles into Mission, where it will there join the other railways in the proposed rail route.

From Mission going west the Canadian National line is shown in yellow. Canadian Pacific will have running rights over the Canadian National Railways. There is already statutory authority for that.

Then we come to the first small line of 2.5 miles indicated in red. Clause 3(a) of the bill—

**The Chairman:** To be constructed.

**Mr. Paradis:** To be constructed, exactly. That is one of the three small lines of railway which B.C. Hydro has been authorized to construct by the provincial authorities. Then we reach a line indicated in blue, and, as you will note from the legend, this line is the existing B.C. Hydro railway line over which we seek running rights under clause 4 of the bill.

Running rights under section 156 of the Railway Act may be granted by one railway to another but for a period not exceeding 21 years. However, there has got to be some permanency in this organization of the railways creating this rail route, so we are before Parliament in clause 4 of the bill to secure running rights for more than a period of 21 years over part of the B.C. Hydro line already constructed, indicated in blue in the centre of the plan.

Proceeding westward from the blue section of the B.C. Hydro line, we come to a second short line, 6.8 miles in length, shown in red which B.C. Hydro has been authorized to construct.

We now reach on the plan a small line of railway indicated in green. This one mile of railway is already constructed and owned by the Great Northern. The Great Northern's railway line starts in the United States and runs in a sort of northwesterly direction in British Columbia. At that point, shown in green on the plan, the proposed rail route will be proceeding over the Great Northern for one mile. There is already statutory authority for Canadian Pacific and Canadian National to have running rights over the Great Northern, so we do not need additional authority for that purpose.

Finally, we come to the last portion of the rail line, shown in red, to be constructed by B.C. Hydro, over a distance of 14.1 miles and which actually runs from the Great Northern to the superport which is under construction at Roberts Bank.

**Senator Innes:** Why did they undertake to construct that 14 miles, instead of your own company, the C.P.R.?

**Mr. Paradis:** Sir, you will appreciate that Canadian Pacific has no line of railway in that territory at the present time. Canadian Pacific's line of railway, if you will refer to the plan, runs from Mission north of the Fraser into Vancouver. Southwestern British Columbia, I might say, is territory over

which B.C. Hydro presently operates. There was a great deal of negotiation and it was finally agreed that B.C. Hydro would secure authority to construct, and they would proceed with the construction of the necessary links. Canadian Pacific proposes to purchase an interest in these short lines, as will Canadian National, and the Great Northern in part but B.C. Hydro has the authority to construct these three lines shown in red on the plan.

**Senator Molson:** Mr. Chairman, could I ask the witness what is the B.C. Hydro line shown here used for at the present time?

**Mr. Paradis:** Senator Molson, if I may, I would like to have my colleagues assist me; I am not too familiar with the operations of B.C. Hydro in British Columbia.

**Senator Pearson:** Is this to be a double track?

**The Chairman:** Would you identify these gentlemen?

**Mr. Paradis:** Mr. Allison, on my right, is Regional Manager of Canadian Pacific, Operations and Maintenance, on the Pacific Region; Mr. Porter, on his right, is the President of Fording Coal Limited; immediately behind me is Mr. Cherrington, Engineer, Special Projects, on the Pacific Division of the C.P.R. and, on his right, Mr. Miller, General Manager, Pricing, of C.P.R.

Mr. Allison, I think you heard the question put by Senator Molson regarding the operations of B.C. Hydro. Would you be good enough to answer his question.

**Mr. R. S. Allison, Regional Manager, Operations and Maintenance, Pacific Region, Canadian Pacific Railway Company:** Sir, the B.C. Hydro have very little rail traffic east of Cloverdale. That line of theirs comes out at New Westminster to Cloverdale and proceeds on to Chilliwack.

At the present time they operate one train in each direction daily, I believe it is, except Sunday, between Cloverdale and Chilliwack.

I might say that the entire line from what is shown as mile 102 on the C.N.R. through to Roberts Bank, which consists of some 32 miles of tracks, would be governed by what we call centralized train control system, which is an automatic block system. The line will have adequate capacity to give us all ready access to Roberts Bank. It will be an uncongested route in other words.

**Senator Molson:** As far as you know is this the only railway that B.C. Hydro operates in British Columbia?

**Mr. Allison:** Yes sir; it is the only one that B.C. Hydro operates.

**Senator Molson:** Is that daily train mixed freight, freight or passenger?

**Mr. Allison:** No, it is just a freight train that switches to any local industry along the route and delivers cars into the Huntingdon area.

**The Chairman:** This B.C. Hydro line is under provincial jurisdiction?

**Mr. Paradis:** That is right, sir.

**The Chairman:** Would it not become a national undertaking after it is linked with the C.P.R. main line?

**Mr. Paradis:** I would not like to pass judgment on that, sir; I do not know whether because they will be linked with Canadian Pacific and Canadian National they will become an undertaking under the jurisdiction of the federal Government.

**The Chairman:** They will become part of a national railway system though.

**Mr. Paradis:** That may be so.

**Mr. D. Russell E. Hopkins, Law Clerk and Parliamentary Counsel:** I can say this, that the Department of Transport has absolutely no objection to this proposal.

**Senator Kinley:** What objection could there be?

**Mr. Paradis:** Honourable senators, I think I have nothing to add except to repeat that insofar as the rail route to Roberts Bank is concerned we are not seeking authority to construct but simply to enter into agreements with B.C. Hydro, whereas in the first part of the bill we seek authority to construct the Fording River branch line.

**Senator Hollett:** Is there any evidence of coal deposits on that first map you gave us?

**Mr. Paradis:** Yes. I think Mr. Porter will be able to answer that question for you.

**Mr. R. M. Porter, President, Fording Coal Limited:** I am not just quite clear what the question was—the extent of the coal deposits?

**Senator Hollett:** The estimated amount of the deposits there?



**Mr. Porter:** With reference to the Fording Coal property with which we are directly concerned and which Fording Coal Limited plans to exploit, our intention is to ship 3 million tons per year for a period of 15 years. We consider that there are adequate reserves available now, new or developed, to support our production plans. Beyond that there is significant potential which has not been developed, and therefore it cannot be defined in terms of tonnage.

**Senator Hollett:** Where is most of the coal shipped to?

**Mr. Porter:** Almost entirely to the Japanese steel companies.

**Senator Isnor:** What is the present production per year?

**Mr. Porter:** Fording Coal is not in production. To the south, at Natal, Kaiser Resources now are shipping at the rate of about one million tons per year, mainly from underground operations. They are in process of developing surface operations, which will be starting in 1970, and they will be shipping at a rate in excess of 5 million tons per year.

**Senator Isnor:** My question was: what are they producing at the present time per year?

**Mr. Porter:** From that area?

**Senator Isnor:** Yes.

**Mr. Porter:** Approximately one million tons per year.

**Senator Kinley:** What are the features that give you this market? What are the advantages that get this market for you?

**Mr. Porter:** Because this is what is referred to as a metallurgical coal. It is a hard coal that is suitable for the manufacture of steel.

**Senator Kinley:** It is the quality of the coal first. How does your price compare with American coal?

**Mr. Porter:** Of course, the main suppliers to the Japanese steel industry at the present time are the Americans from West Virginia. Their predominant position will probably be taken over by the Australians within the next year or so, who ship from eastern Australia, New South Wales from the old mines and particularly in Queensland, where new mines are developing. So it is a competitive situation. We feel that we can produce and make the necessary investments at the prices which

have been established on a competitive basis in Japan.

**Senator Kinley:** The water transportation is your advantage; is that it?

**Mr. Porter:** Yes.

**Senator Kinley:** Do you ship it in your own ships?

**Mr. Porter:** No.

**Senator Kinley:** Do Canadian Pacific ships carry the coal?

**Mr. Porter:** No. We plan to transfer ownership of the ship at Roberts Bank.

**Senator Kinley:** Then the Japanese will carry the goods?

**Mr. Paradis:** That is right, sir.

**Mr. Porter:** They will take care of the ocean transport and part of it will be in their own ships.

**Senator Kinley:** That looks right.

**Senator Molson:** This will go in unit trains, I suppose. What does that work out at daily?

**Mr. Porter:** It is in the order of 10,000 tons per calendar day.

**Senator Isnor:** What are the possibilities of increased production?

**Mr. Porter:** From the Fording Coal Properties?

**Senator Isnor:** Yes.

**Mr. Porter:** There certainly is a potential. This is a very large undertaking that we are entering into. I would not like to predict a higher level of production, but there is a distinct possibility that we may produce at a higher rate than the 3 million long tons per year which are planned at present.

**Senator Isnor:** I am asking that question, Mr. Chairman, because of the closing down of certain mines in Nova Scotia. I was wondering if some day these lost miners might find employment in British Columbia, not that I want to see them leave Nova Scotia. Would you care to comment on that? Increased production should mean increased employment.

**Mr. Porter:** Very definitely, and we will be certainly going out to hire men. I feel confident that if there are applications from those



people that they would get certainly full consideration. This surface mining means employing people who have the ability to operate large equipment.

**Senator Sparrow:** What would the total be? You estimate that in 1972 you will be in full production; what would your employment be?

**Mr. Porter:** We plan to start production in 1972 and we would expect to employ about 300 at the site.

**The Chairman:** Coming back to the bill, clause 4, why limit the duration of your agreement with B.C. Hydro to 21 years?

**Mr. Paradis:** On the contrary, Mr. Chairman. Under the provisions of section 156 of the Railway Act, running rights may be given by one railway to another without parliamentary authority provided it is for a period not exceeding 21 years. Here, since we propose to make an arrangement with B.C. Hydro to have running rights over their line for a period exceeding 21 years, we must come before Parliament. That is the reason for clause 4.

**Mr. Hopkins:** There is no limitation in clause 4.

**Mr. Paradis:** That is right, sir.

**Senator Molson:** I move we report the bill, Mr. Chairman.

**Honourable Senators:** Agreed.

**Senator Isnor:** I have a question: What is the actual number of miles that C.P.R. will be constructing?

**The Chairman:** Thirty-four miles.

**Mr. Paradis:** For the Fording River branch line, senator, 34 miles.

**Senator Isnor:** What kind of country does that go through? In other words, what do you estimate the average cost per mile to be?

**Mr. Paradis:** I think either Mr. Allison or Mr. Cherrington can give that answer.

**Mr. J. Cherrington, Engineer, Special Projects, Pacific Region, Canadian Pacific Railway Company:** It is at the west slope of the Rocky Mountains, through rolling valley following the Elk and the Fording Rivers. There is some grazing land, but very little habitation and no public roads. Some lumbering has been carried out. The original estimate of cost is \$9.2 million. That is approximate, because we have not completed our engineering.

**The Chairman:** Shall we report the bill?

**Hon. Senators:** Agreed.

The committee adjourned.















First Session—Twenty-eighth Parliament  
1968-69

# THE SENATE OF CANADA

## PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

# TRANSPORT AND COMMUNICATIONS

The Honourable GUNNAR S. THORVALDSON, *Chairman*

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No. 10

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### *Complete Proceedings on Bill C-184,*

intituled:

"An Act to establish a Canadian corporation for telecommunication  
by satellite".

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THURSDAY, JUNE 26th 1969

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### WITNESSES:

*Department of Communications:* The Honourable Eric Kierans, Minister.  
Dr. J. H. Chapman, Assistant Deputy Minister. R. Turta, Adviser,  
Project Office.

*Department of Justice:* F. E. Gibson, Legislation Section.

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### REPORT OF THE COMMITTEE

STANDING SENATE COMMITTEE  
ON  
TRANSPORT AND COMMUNICATIONS

The Honourable Gunnar S. Thorvaldson, *Chairman*

The Honourable Senators:

Aseltine	Hollett	Molson
Blois	Isnor	O'Leary ( <i>Antigonish-</i> <i>Guysborough</i> )
Bourget	Kinley	O'Leary ( <i>Carleton</i> )
Burchill	Kinnear	Pearson
Connolly ( <i>Halifax</i> <i>North</i> )	Langlois	Petten
Davey	Lefrançois	Rattenbury
Denis	Macdonald ( <i>Cape</i> <i>Breton</i> )	Smith ( <i>Queens-</i> <i>Shelburne</i> )
*Flynn	*Martin	Sparrow
Fournier ( <i>Madawaska-</i> <i>Restigouche</i> )	McElman	Thorvaldson
Gladstone	McGrand	Welch—(30)
Hayden	Michaud	

\*Ex Officio member

(Quorum 7)



## ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 25th, 1969:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Macdonald (*Cape Breton*) resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Kickham, for the second reading of the Bill C-184, intituled: "An Act to establish a Canadian Corporation for telecommunication by satellite".

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin P.C., seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—  
Resolved in the affirmative."

ROBERT FORTIER,  
*Clerk of the Senate.*



## MINUTES OF PROCEEDINGS

THURSDAY, June 26th, 1969.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met to consider:

**Bill C-184, "Telesat Canada Act".**

*Present:* The Honourable Senators Thorvaldson (*Chairman*), Burchill, Isnor, Kinley, Kinnear, Macdonald (*Cape Breton*), Petten and Smith. (8)

*Present, but not of the Committee:* The Honourable Senator Haig.

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

*Department of Communications:*

The Honourable Eric Kierans, Minister.

Dr. J. H. Chapman, Assistant Deputy Minister.

R. Turta, Adviser, Project Office.

*Department of Justice:*

F. E. Gibson, Legislation Section.

*Resolved:*—That 800 copies in English and 300 copies in French be printed of these proceedings.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 11:00 a.m. the Committee adjourned.

**ATTEST:**

Frank A. Jackson,  
*Clerk of the Committee.*

## REPORT OF THE COMMITTEE

THURSDAY, June 26th, 1969.

The Standing Senate Committee on Transport and Communications to which was referred the Bill C-184, intituled: "An Act to establish a Canadian corporation for telecommunication by satellite", has in obedience to the order of reference of June 25th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

GUNNAR S. THORVALDSON,  
*Chairman.*



## THE SENATE

### THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

#### EVIDENCE

Ottawa, June 26, 1969

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-184, to establish a Canadian corporation for telecommunication by satellite, met this day at 9.30 a.m. to give consideration to the bill.

**Senator Gunnar S. Thorvaldson** (*Chairman*)  
in the Chair.

**The Chairman:** Honourable senators, I see a quorum. May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

Honourable senators, we are considering Bill C-184, the short title of which is the Telesat Canada Act.

We are much favoured this morning by having with us the Minister of Communications, the Honourable Eric Kierans. We also have with us several officials of his department, including Dr. J. R. Chapman, Assistant Deputy Minister, Research; Mr. G. Bergeron, Assistant Deputy Minister, Operations; Mr. R. Turta, Adviser, Project Office; and, from the Department of Justice, Mr. F. Gibson, the legal adviser.

The Minister has a Cabinet meeting later this morning and, consequently, I have told him that we will not keep him any longer than we have to. I have suggested that he might make a general statement in regard to the bill, and then you might direct your questions to him, as long as he is able to stay. Then, after he leaves, the officials of the department will be here to answer any further questions concerning the bill.

**Honourable Eric Kierans, Minister of Communications:** Mr. Chairman, honourable senators, thank you very much. I do not want any of you to feel you are under pressure, because I will stay as long as there are questions to answer. My particular role would be to answer questions in the field of the financing of the satellite; and, for the rest, Dr. Chapman and Mr. Bergeron are fully qualified, and much more so than myself, to speak on the technical aspects and all the other problems associated with building the satellite and getting it up there.

However, before starting I would like to make an announcement here, instead of calling a press conference to make it.

The department intends to invite all Canadians to put their name in space. In other words, we are preparing an elaborate but inexpensive program, the total cost of which will be about \$12,000, that will invite every Canadian across Canada to suggest or choose a name for this domestic satellite, and the winning prize is a nominal one, but it will be an expense-paid trip to watch the launching which will take place at Cape Kennedy.

The purpose of the competition is to enable Canadians to participate, in a small but significant way, in this satellite project, and I hope that a great many Canadians will enter the competition, so that the satellite may be launched bearing a name that is expressive of Canada and that is also expressive of the vast potential that is signified by this brand-new technology.

The competition will run through the summer, until October 1, and then, shortly thereafter, the winning name will be selected by a panel of three judges.

The judges of the competition will be: Professor Marshall McLuhan, whom I think everyone knows, the Director of the Centre of Culture and Technology at the University of

Toronto; M. Gratien Gelinas, an extremely well-known playwright, both to English speaking and French-speaking Canadians, of the Comedie Canadienne in Montreal; and Leonard Cohen, poet, novelist and singer, of Montreal. Their decision will be final.

To bring this competition to the attention of as many Canadians as possible we have prepared some 12,000 distinctive blue and green *Satellite Canada* posters, which we are distributing across the country. They are going to carry the slogan "Put Your Name in Space/Mettez Votre Nom en Orbite", and a stylized maple leaf flag overlayed with the broadcast beams demonstrating the manner in which the satellite will beam down on Canada.

All of the information will be printed, and the rules and entry forms and so on will be distributed through the 8,000 post offices across the country. They will be displayed also at a number of outlets including the bookstores of the Queen's Printer, the public offices of Canadian telephone companies, the ticket offices of Air Canada, CP Air, and Pacific Western Airlines, the public offices of Canadian National Telecommunications and Canadian Pacific Telecommunications, distribution centres of R.C.A. Victor, Man and His World, the House of Commons Information Booth, and the National Arts Centre. I might say here that the telephone companies are quite anxious to co-operate with us in every way, and they are going to enclose information on this competition at their own expense in their July mailings to more than 5 million customers.

For the information of senators I will say that a number of these posters are being translated into the Eskimo and Indian languages, and will be distributed in the Yukon and Northwest Territories.

One or two names that have already been suggested on an informal basis have an Eskimo or an Indian origin. I do not know what the judges are going to say about this, but one or two seem to be completely expressive of the nature of both the satellite itself and Canada. However, that is up to somebody else to judge. I am not going to take on that responsibility.

Now, I am here to answer questions on the satellite and its financing.

**The Chairman:** Mr. Kierans, I wonder if we might ask you to make a brief statement in respect of the financing of this satellite

which, as we have found, is most unusual because it contains new ideas of financing such a project. It would be most interesting if you would make a statement on that first.

**Hon. Mr. Kierans:** Basically, it has been Government policy since the White Paper that this should be a tri-partite venture. The Government's interest depends first of all on the fact that we have a tremendous scientific in-put to make ourselves. Dr. Chapman, who was the Vice-Chairman of the Defence Research Board, has now, among his other responsibilities, charge of the communications research centre out at Shirley's Bay where there are 500 engineers, scientists and technicians who have devoted years and years to research in space. So, we do have a contribution to make in this satellite sphere.

The Government is in it also because part of our national objective is to ensure that there be communication in both languages right across the country. This is a national objective which purely private corporations cannot be expected to accept entirely. I am not criticising them in any single way. If I were running a private telephone system I would proceed up north as it became economic or profitable. But, the Government wants to make sure that right across this country there will be television in both languages, and communications in both languages.

I do not know whether honourable senators have done this, but I have certainly made a great many speeches alluding to the vast potential that is Canada. Canada is one of the largest land masses in the world and it has tremendous mineral, fish, and forest resources, and it has oil and gas, but I have never been in more than nine per cent of Canada in all my life. The farthest north I have been is Grande Prairie, where I was on one occasion. I have talked about the development and the vision of the north. Mr. Diefenbaker proposed this, and it is a great and imaginative concept. We have talked like this, but it is necessary to bolster this kind of statement, just as in 1867 it was necessary to link this country by rail—the steel ribbon from one end of the country to the other. We must make valid all these wonderful speeches that I and others have made. We must ensure that there are communications in this country.

The greatest difficulty that most prospecting and development corporations face in the north is with their people—their engineers, prospectors, technicians, drillers, and excava-



tors. Once they get up there and lose contact with the rest of Canada they have a feeling of isolation, and this results in tremendous turn-overs. There have been turn-overs of personnel as high as 35 per cent in six months.

So, the basis of really talking about Canada's vast potential in the north—the real fundamental, underlying basis—is going to be providing communications so that if a man is up in the Eastern Arctic he knows that he can see the same programs at the same time—taking into account local real time—that you and I see them. He knows that he can hear them in either language. He knows that he can be in telephone contact with his friends in Windsor, Ontario or in Liverpool, Nova Scotia, or wherever it may be. This is the reason why the Government feels it should have an in-put into this satellite.

Secondly, there is no way that I can see of putting up a satellite effectively without taking advantage of all the expertise that exists in the common carriers and the telephone companies across this country. This is the reason why they are in this. They are not only going to be users of the new system, but they are also going to put in a tremendous amount of scientific knowledge and capability.

Thirdly, the Government wants the public as a whole to participate by investing in this. One of the probable line-ups that we have suggested in respect of financing is that the Government will put in a third, the common carriers a third, and the general public a third. These fractions may vary, although I do not think the common carriers' fraction will vary. They will put in a third. The Government may decide to put in only 25 per cent, and, if so, the general public will have more opportunity to invest. But, all of this is going to be the subject of bargaining.

This new corporation will be committed to no underwriter in particular. All existing corporations have traditional relationships with their underwriters, whether it be Wood Gundy, Dominion Securities, or Nesbitt Thomson, or anybody else. We are inviting the investment community to develop this. We are putting it up to them to develop an imaginative proposal for financing this corporation. Therefore, the financing could be a combination of equity and debt.

What is the advantage of that? Suppose some underwriter said: "All right, we will take on this issue; we feel that we can sell this to the public on the basis of \$40 million equity and \$20 million debt.", and suppose at

that time the Government has decided that it will, in fact, subscribe a third of that amount of \$40 million, then the Government's actual investment in the whole satellite project will be a third of \$40 million, because the debt will be sold on the market to pension funds, insurance companies, and so on. If the Government decides it will invest only 25 per cent, then its actual investment will be \$10 million. We are thinking of it in this way because we want to limit the actual financial commitment of the Canadian Government as much as possible.

These are times when there is great stringency in the capital market. To the extent that the federal Government can limit its own demands on that capital market it will leave the market open for the provinces, the municipalities, and the corporations.

It is true that this will have no budgetary impact. If the Government invests \$10 million it does not mean that the Government's surplus goes down or that its deficit goes up by \$10 million. But, it does mean that the Government will be going into the market for \$10 million in order to put \$10 million into the Telesat Corporation. So we, have a very flexible financial outline at the moment.

In the bill—and I will be very frank with honourable senators here—there are two clauses, one of which provides that the Government can invest up to \$30 million in equity, and another which says that the Government can invest up to \$40 million in debt. In fact, what we are doing there is reserving for ourselves an ultimate bargaining position with the telephone companies and the public.

I will tell you the reasoning behind that. Suppose the telephone companies had come to us and said: "We will invest in your new satellite corporation only on condition that we own it 100 per cent outright ourselves, or only on condition that you sell all the capacity of that satellite to us." Then, by this bill, honourable senators, we would have been able to say to them: "Well, if you are going to adopt that attitude the Government cannot accept you having a complete monopoly on all space communications. The Government, rather than permitting a perfect monopoly in this entire area, will go ahead and do it itself." In other words, it is a bargaining position.

I do not think it is relevant right now, but, in other words, we are trying to give ourselves as many "hole cards" as we can in this poker game.

**Senator Smith:** Is it the intention of the Government and the corporation to have a complicated arrangement of deferred classes of shares; and with regard to the debt, will that be bonds with shares attached to them, with options, or will there be one class of shares, common shares?

**Hon. Mr. Kierans:** We had a proposal put to us, senator Smith, that there should be those and that there should be all these other instruments but, as a former president of stock exchanges, I am psychologically opposed to this.

Companies with class A and B shares would provide for A and B with different voting rights. The sophisticated manager of the pension fund of the C.P.R. would know what to invest in, but the ordinary shareholder would not know whether or not he has a vote and whether one of those classes would have ten votes to his one.

These will be simple equity, simple debt. It may be that, to sell some of the debt, we may attach some benefit—if you buy \$100 or \$1,000 worth of bonds, it may be that we will put in the package so many common shares at the same time, so that you have it both ways. However, that will be for everybody. This is a selling device.

Your question is, will the certificates themselves be clear. The answer is yes, that is right. Every share we sell will have the same voting rights, the same share in all of the profits of the company. It will be one simple common share.

**Senator Smith:** Would private carriers some day be able to buy shares from others and so eventually get control of this? What is the safeguard?

**Hon. Mr. Kierans:** It is not possible. I will ask Mr. Gibson, from the Department of Justice, to explain exactly why.

**Mr. F. E. Gibson, Legislation Section, Department of Justice:** Mr. Chairman and honourable senators, the bill contains specific prohibitions against common carriers, or the Government, going into the market to acquire shares that were originally issued to persons described in the bill as persons who fulfil statutory conditions.

The bill is designed to safeguard the original proportions in which the shares are allotted amongst common carriers, the Government, and persons who fulfil statutory conditions.

Except under very stringent controls, those original proportions cannot be varied.

**Hon. Mr. Kierans:** I would add one point. Within a group—for example, within the common carrier groups—supposing they had 33⅓ of the total shares—then, as Mr. Gibson has said, that group cannot have more.

It may be that there will be a re-scheduling. At the beginning of the shareholding in that group, that 33⅓, Bell Canada may have 8 or 9 per cent. Then, if Bell Canada should take over one or two other companies holding shares, Bell Canada's share may increase to 11. But they cannot hold more than the 33⅓. They have to work that out with B.C. Telephone and other telephone companies, if they wish to do this.

**Senator Smith:** What effect, if any, would this have on the operations of the satellite tracking station at Mill Village?

**Hon. Mr. Kierans:** That is an international one, and I think you will be pleased that this afternoon we are tabling in the house the COTC annual statements, both on operations and on capital. Their profit has gone up considerably and most of this is due to the more efficient performance of the assets which have gone in, in Mill Village.

**Senator Burchill:** Do you anticipate that this new proposal will be a profitable undertaking?

**Hon. Mr. Kierans:** Yes, I do.

**Senator Burchill:** You mentioned earlier that you could not expect the common carriers to do this job because they would regard it as an economic exercise, and you would not blame them. If it would not be profitable for them, how is it profitable?

**Hon. Mr. Kierans:** I was probably thinking in another time zone there. The Canadian Government wants this to go ahead right now, whereas, if you were the head of a telephone company, you might say that this is not your immediate priority and could be put off and off. In the ordinary investment policies of the telephone companies, those companies might say, for instance, that they would go up to the Mackenzie Valley when there were enough people there to justify it.

We are going to ensure, by the revenue contracts with the telephone companies and with the CBC, the two big users of this, that there will be enough revenue to pay for the



cost, the depreciation, the obsolescence—built in, in this kind of technology—and all other costs, to ensure a profit and a return, exactly as COTC is doing today.

**Senator Burchill:** In order to get private investors, you would have to assure them of some kind of income.

**Hon. Mr. Kierans:** There will be an income in it and we will assure that. We will assure that in the bargaining that will take place this summer between the corporation itself. If you pass this bill, until we name the officers, they will not be going in their own name, but in the meantime we have to go ahead giving contracts, to ensure the actual building of it. At that time, we will be undertaking the revenue requirements for the use of the satellite.

**Senator Burchill:** Will this have any effect on Trans-Canada Telecommunications?

**Hon. Mr. Kierans:** No. We have been dealing with them, rather than with the individual telephone companies, with the system itself.

**The Chairman:** I have just one question and probably I should put it to Mr. Gibson. I was going through Schedule B which contains provisions affecting the acquisition and holding of common shares. I observe that they seem to be quite stringent in regard to control of foreign ownership. In the case of a Canadian company which is foreign owned and controlled, is such a company entitled to hold shares in this corporation?

**Mr. Gibson:** Clause 4 of Schedule B, on page 32 of the bill, contains a definition of non-resident, which not only speaks in terms of non-resident in terms of an individual but also in terms of a corporation. For instance, a corporation, incorporated firm, or otherwise organized elsewhere than in Canada, is a non-resident corporation. A corporation that is controlled directly or indirectly by non-residents, as defined in any of the sub-paragraphs (i) to (iii)—which is a reference back—is a non-resident. A corporation...

**The Chairman:** I think I have the answer. So, in other words, this covers a Canadian company which is controlled by a foreign corporation or individual is not entitled to be eligible.

**Mr. Gibson:** That is—well—if it falls within the limited class in which 20 per cent of the shares held by the public may be held by

non-residents, such as corporation would fall within that limit.

**The Chairman:** Thank you.

**Senator Kinley:** How far has this developed in other countries?

**Hon. Mr. Kierans:** Communication satellites themselves are a real thing. They are a routine thing now, but only on the international level, starting with Early Bird International Satellite, and now up to Intelsat 4, there are four up there.

Canada participates in that, and all of the information channels come down through Mill Village for distribution across Canada. So the technology itself has all been proved out for many years.

We will be the first country to have our own domestic communications satellite. The No. 1 reason is there is hardly a country in the world, except possibly Brazil or India, of roughly the same size having the same problems that we have of communicating within all parts of the frontiers. So there is the impulse which forces us to go at it right away.

The United States, for example, can say that although they are almost as big as we are, nevertheless their microwave systems reach into every corner of the United States. There is not the same pressure to have a domestic satellite, therefore. So this is the pressure on Canada: "To do its own thing", if you want, and get that one up there.

In Europe the problems are of a different order. They have to sort out the capacity of such a satellite. How do you distribute part of such a satellite to France, another part to Germany, another part to Belgium or Sweden or whatever country it might be? We have none of those problems. So the political problems involved in Europe also have the effect of retarding it.

There are other nations that could put a satellite up, but it seems to us, for motivational reasons, to face up to the problems that are peculiar to Canada, that we have got to get one up as soon as possible.

It so happens that we will be the first nation to have a domestic satellite up.

**Senator Kinley:** Is Canada's place in the continent particularly suitable for this sort of communications system, owing to the fact that we are in the northern part of the conti-

ment and the distance from earth to the satellite might be shorter?

**Hon. Mr. Kierans:** The advantage is just in what the satellite will do itself. The satellite will make it possible to reach into every corner—every inlet in the Arctic, every harbour in Newfoundland and every harbour on Vancouver Island.

Incidentally, when I say that Canada will have the first domestic satellite up, I mean that it will be the first synchronous domestic satellite. The Russians already have a non-synchronous satellite up.

Canada's system will be the most ideal and most inexpensive way to proceed. If we tried to do the same thing by extending land systems into the vast territory that is Canada, it would not be feasible economically.

**Senator Kinley:** This is a natural for Canada.

**Hon. Mr. Kierans:** It is a natural for Canada and it is a necessity.

**The Chairman:** Honourable senators, I understand the minister has to attend another meeting very shortly, but his officials will be very happy to answer any further questions you might have. Thank you very much, Mr. Kierans.

**Hon. Mr. Kierans:** Thank you very much, senators. I enjoy this and I hope you keep inviting me back.

**Senator Isnor:** Mr. Chairman, perhaps Dr. Chapman could tell me who took the initiative in this—a private company or the Government?

**Dr. J. H. Chapman, Assistant Deputy Minister, Department of Communications:** The first moves in satellites in Canada were taken by the Government, immediately after the launching of Sputnik I, which was in October, 1957. At that time the Government analysed the impact that this new technology might have on Canada and it came to the conclusion that it would be important to Canada and that something should be done. The Government decided that some programs should be started in Canada to make sure that we were in the position to take advantage of the new technology of space, being able to put satellites in orbit. The Government began at the end of 1958 the Alouette I scientific satellite program. In 1963 the Government moved to extend the knowledge of

technology which had been gained in the Government laboratories in industry through the program called ISIS, International Satellites for Ionospheric Studies, a joint program with the United States which had two objectives. One objective was to carry on the research which was particularly pertinent to the problems of Canada's north and the communications in Canada's north. The second objective was to make Canadian industry able to move into the space age.

The industry—Bell Telephone Company—began in about 1962 serious studies of satellite communications. Private industry—first the Power Corporation and Niagara Television in 1966 and then Trans-Canada Telephone System and the Canadian National-Canadian Pacific Telecommunications together—came forward with a proposal to the Government for a communications satellite system. So there were two proposals to the Government in 1966 and 1967 from private industry for satellite systems such as were described in the Government's White Paper.

Perhaps that covers your question. The Government started; industry came in very shortly afterwards and the two have marched it along together since.

**Senator Isnor:** Thank you very much.

**The Chairman:** Dr. Chapman, we have heard in the Senate that some of these companies were willing to go ahead by themselves. Is that correct?

**Dr. Chapman:** Both Power Corporation, in association with Niagara Television, and the Trans-Canada Telephone System in association with CN-CP Telecommunications came forward with proposals requesting the Government to give them permission to go ahead and make systems on their own. Either on their own or in association with the Government.

**The Chairman:** Will you be able to have telephonic communications with the north without wires, Dr. Chapman? Or will you still need telephone wires and poles and the usual equipment that goes with telephone systems?

**Dr. Chapman:** Well, the satellite will provide the long lines. To give you a specific example, there will be circuits from the earth stations in the Toronto and Montreal areas to the satellite. There will be a circuit from the satellite to Frobisher Bay. There will be a Frobisher Bay satellite-earth terminal which will receive the signals from the satellite and



transmit back to the satellite and thus back to the southern part of Canada. You will, of course, have to have telephone lines in and around the community of Frobisher Bay to connect the telephones to the switchboard and the switchboard to the satellite terminal. But the hop from Frobisher Bay to the Montreal area, for example, will go by satellite.

**The Chairman:** Dr. Chapman, who will be your main payers of revenue? That is, the main paying customers of the corporation?

**Dr. Chapman:** There will be two main classes of customers. One class will be the telephone company and the second will be the broadcasting company. The department has been holding discussions and negotiations with both these groups, to determine their needs and what they are prepared to pay for the kind of service the satellite corporation can give them.

**The Chairman:** Has there been a projection of the total revenues?

**Dr. Chapman:** The projection made by the department is that a revenue of \$18 million a year—

**The Chairman:** Gross?

**Dr. Chapman:** —gross, is required in order to cover all the needs of the corporation, as the minister has described.

**The Chairman:** Thank you. Are there any further questions of Dr. Chapman?

**Senator Macdonald:** What is the legal angle on putting these satellites up there? Do you have to have agreements with the United States or Russia or anybody else; or can each country put up their own, and as many as they want?

**Dr. Chapman:** Let me first say that there is a Treaty on Outer Space which says that space is open to all nations. Space occupies the same position as the high seas do—they cannot be claimed by any one nation.

**The Chairman:** Was that treaty negotiated through the United Nations facilities? If you do not know, it does not matter.

**Dr. Chapman:** I believe it was. It is a treaty that Canada has ratified, the Treaty on Outer Space. So, we cannot, figurately speaking, put a stake in a particular piece of space or put a Canadian flag up there and say, "That's ours."; nor can any other country.

The second point is the use of space for any purpose which uses radio, and here the problem is quite simple. You can only put one radio transmitter or receiver in any particular place; and the satellite is a radio-transmitting and-receiving station in space. You cannot put another one using exactly the same frequency in the same place; otherwise they interfere with each other. Therefore, one must have an international agreement between countries regarding the frequencies which will be used in a particular place.

There is an arm of the United Nations, the International Telecommunications Union, which is the international body which has been developed to co-ordinate the use of radio frequencies on the ground; and now we are extending its jurisdiction to the co-ordination of radio frequencies in space. This means that Canada will register with the International Telecommunications Union that Canada wants to put a satellite on the Equator, at 109 degrees west, which will use this list of six frequencies for transmitting and six frequencies for receiving and that we will want to put that satellite there about the end of 1971. That registration of the frequencies and location would effectively establish a claim for that particular piece of space and to use those particular radio frequencies.

The procedure in the International Telecommunications Union is that other countries can protest Canada's use of that space; or we can protest the Russians' use of space or the Americans' use, if we wish. Therefore it is necessary to discuss with other countries that might be interested in that same area of space, their interest, in order to make sure that when it comes down to the final registration it is agreed that this does not conflict.

In principle, this is exactly the same procedure as must go on between Canada and the United States so far as broadcasting stations are concerned close to the border. We cannot have a Channel 4 television station on one side of the St. Lawrence River and they have another Channel 4 television station on the opposite side, because no one can use the same frequencies. In principle, it is the same thing: we have to agree with those countries that have an interest; we have to work out how we are going to share the use of the frequencies and the orbit positions.

We are in the process of carrying out the negotiations. I myself was in Washington last week to put before the international communications satellite consortium, Intelstat, a

plan for our use of frequencies and positions, and notified the other countries officially that have an interest in this that this is what Canada wants to do. It is part of the process of consultation.

**The Chairman:** Would you describe Intelstat? Just what is it?

**Dr. Chapman:** It is an international consortium which was established by a convention signed in 1964 between about 11 or 12 countries, of which Canada was one, the purpose of which is to set up a system of international communications by satellite—therefore, the name Intelstat, International Telecommunications by Satellite. I believe it now has about 65 member countries. In principle, the satellites are owned by this international consortium, and the earth stations are owned by the country in which the earth station is located.

Perhaps to make it a little clearer, I will use Canada as an example. The Mill Village Station in Nova Scotia is the Canadian earth terminal for international satellite communications. It uses the satellites over the Atlantic ocean: Intelstat 1, 2 and 3. The COTC rents channels, telephone circuit capacity or television transmission capacity, from Intelstat and it transmits and receives at Mill Village and communicates to one of the European countries, whichever one has a ground station in use at the particular time—France, Britain, Germany or Italy.

**The Chairman:** In other words, it puts you into the world system?

**Dr. Chapman:** Yes, we are in the world system, and the Canadian Overseas Telecommunications Corporation is the Canadian member of this international communications consortium, and it is a shareholder in the satellites which exist there now. We own something like 3 per cent of the stock—we own 3 per cent of all the satellites in orbit now; that is, the Canadian people as a whole.

**Senator Smith:** Mr. Chairman, may I add something to what the expert has said about the earth station which is very near my own home. That is what Mr. Kierans referred to

when he said that he is going to table the report today, indicating a very profitable year. I also understand—and I can be corrected if I am wrong—that they generated their own capital, without coming to the Government, for an extension to that station down there, within the last year or so.

If this is an example of how the communications corporation we are now setting up is going to operate, we had better get our order in right away and get some of those shares!

**The Chairman:** I saw an interesting statement in regard to the stock of COMSAT. Their shares have doubled and trebled and quadrupled, is that right?

**Mr. Turta, Adviser, Project Office, Department of Communications:** Yes. They came out in 1964, at \$20 a share. The stock was very heavily oversubscribed in a very short time, and it doubled in price very soon after issue. At one time the shares reached a high of \$70, and at present they are trading at between \$45 and \$50 in spite of the depressed market.

The original stock issue was \$200 million which was divided between the common carriers and the general public. The public portion of the stock was very heavily subscribed, and it was necessary to allot only a portion of the orders in order to satisfy the demand for the stock.

**The Chairman:** And that is an American corporation?

**Mr. Turta:** Comstat is a U.S.A corporation.

**The Chairman:** Where is the head office?

**Mr. Turta:** The head office is in Washington, D.C.

**The Chairman:** That gives you an idea, Senator Smith, of the possibilities. Are there any more question?

It has been moved by Senator Kinley, seconded by Senator Smith, that we report the bill. Is it agreed?

**Hon. Senators:** Agreed.

The committee adjourned.

















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